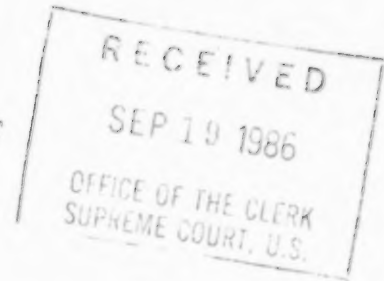


No. 85-1277

IN THE SUPREME COURT  
OF THE  
UNITED STATES



OCTOBER TERM, 1986

SCHOOL BOARD OF NASSAU COUNTY, FLORIDA, et al.,

Petitioners,

v.

GENE H. ARLINE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

SUPPLEMENTAL AUTHORITIES LODGED WITH  
BRIEF OF THE EMPLOYMENT LAW CENTER,  
NATIONAL GAY RIGHTS ADVOCATES, BAY AREA  
LAWYERS FOR INDIVIDUAL FREEDOM, AND  
LAMBDA LEGAL DEFENSE AND EDUCATION FUND  
AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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# TABLE OF CONTENTS

1. Department's Post-Hearing Brief,  
California Dep't of Fair Employment & Housing  
in re Estate of Chadbourne v. Raytheon Company,  
No. FEP 83-84 L1-0310p (F.E.H.C. Aug. 4, 1986)
2. People v. 49 West 12 Tenants Corp.,  
N.Y.L.J., Oct. 17, 1983, at 1,  
col. 1 (No. 43604/83,  
N.Y. Sup. Ct. Oct. 7, 1983)
3. Racine Education Ass'n v. Racine United  
School District,  
1 AIDS Pol. & L. (BNA) No. 9, at 1  
(E.R.D. - Wis. D.I.L.H.R. April 30, 1986)
4. 1 AIDS Pol. & L. (BNA) No. 11, at 3 (June 18, 1986)
5. Canellos, Ill-Founded Notions: Job Discrimination  
Against Cancer Patients, The Boston Phoenix,  
January 15, 1985, at 1.
6. Letter from James W. Alley, Director,  
Division of Public Health, Georgia Dep't of  
Human Resources, to Benjamin Schatz  
(June 19, 1986)
7. Letter from Walter C. Barwick, Deputy  
Commissioner, Minnesota Dep't of Human  
Rights, to Benjamin Schatz (June 3, 1986)
8. Letter from Eugene L. Booth, Exec. Director,  
Rhode Island Commission for Human Rights,  
to Benjamin Schatz (June 25, 1986)
9. Letter from Janet L. Bradley, Exec. Director,  
Alaska Human Rights Commission, to  
Benjamin Schatz (June 30, 1986)
10. Letter from Robert D. Brown, Exec. Director,  
Ohio Civil Rights Commission, to  
Benjamin Schatz (July 14, 1986)
11. Letter from Mary Devlin, Unit Supervisor,  
Washington State Human Rights Commission,  
to Benjamin Schatz (June 6, 1986)
12. Letter from Janice F. Doggett, Staff Attorney,  
Montana Human Rights Commission,  
to Benjamin Schatz (July 28, 1986)
13. Letter from Merryl Gibbs, Exec. Director,  
New Hampshire Commission for Human Rights,  
to Benjamin Schatz (June 23, 1986)
14. Letter from Arthur L. Green, Director,  
Connecticut Commission on Human Rights &  
Opportunities, to Benjamin Schatz  
(July 22, 1986)
15. Letter from Shelvin L. Hall, General Counsel,  
Illinois Dep't of Human Rights, to  
Benjamin Schatz (June 27, 1986)
16. Letter from Denise R. Johnson, Chief, Public  
Protection Div., Vermont Office of the  
Attorney General, to Benjamin Schatz  
(July 14, 1986)
17. Letter from Roger W. Lovett, Chief Legal  
Counsel, Kansas Commission on Civil Rights,  
to Benjamin Schatz (June 9, 1986)
18. Letter from David F. Montoya, Exec. Director,  
Human Rights Commission of New Mexico,  
to Benjamin Schatz (June 18, 1986)
19. Letter from Lawrence R. Myers, Exec. Dir.,  
Nebraska Equal Opportunity Commission, to  
Benjamin Schatz (June 3, 1986)
20. Letter from Louise Oncley, Special Ass't to  
the Exec. Director, Pennsylvania Human  
Relations Commission, to Benjamin Schatz  
(July 15, 1986)
21. Letter from Charles A. Rando, Supervisor,  
Labor Standards/Fair Employment Div.,  
Wyoming Dep't of Labor & Statistics, to  
Benjamin Schatz (June 11, 1986)
22. Letter from Mary Roberts, Commissioner,  
Oregon Bureau of Labor & Industries, to  
James M. Campbell (Mar. 13, 1986),  
reprinted in 2 Empl. Prac. Guide ¶ 5020
23. Letter from Andrew J. Turner, Jr., Director,  
Delaware Division of Human Relations, to  
Carol Moore (Aug. 20, 1986)
24. McKenna, Employment and Insurance Issues for  
the Cancer Patient, Proceedings of the  
Fourth National Conference on Cancer and  
Nursing 36 (1984)
25. Minutes of the Colorado Civil Rights Commission  
(March 28, 1986)

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L.A. Times, June 29, 1986, Part V, at 5,  
col. 4-6
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28. Opinion Letter of John H. Suda, Acting  
Corporation Counsel, Government of the  
District of Columbia (Oct. 15, 1985)
29. Philadelphia Gay News, Jan. 3-9, 1986, at 3
30. Recommendations for Preventing Transmission of  
Infection with Human T-Lymphotropic Virus  
Type III/Lymphadenopathy-Associated Virus  
in the Workplace, 34 Morbidity and Mortality  
Weekly Report 681 (The Centers for Disease  
Control, Nov. 15, 1985)
31. Report of the Michigan Public Health Advisory  
Council to Governor James Blanchard 32  
(March 18, 1986)
32. Taber's Cyclopedic Medical Dictionary  
(14th ed. 1981)
33. Testimony of Patricia E. Ryan, Exec. Director,  
Maine Human Rights Commission before the  
Joint Standing Committee on Human Resources  
(Mar. 17, 1986), reprinted in 2 Empl. Prac.  
Guide (CCH) ¶ 5023

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation	)	CASE NO. FEP83-84 L1-0310p
of	)	
THE DEPARTMENT OF FAIR EMPLOYMENT	)	L-33998
AND HOUSING,	)	
	)	L1-0310p
vs.	)	
	)	
RAYTHEON COMPANY,	)	
	)	
Respondent.	)	
-----	)	
ESTATE OF JOHN R. CHADBOURNE,	)	
	)	
Complainant.	)	
_____	)	

DEPARTMENT'S POST-HEARING BRIEF

DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING

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	<u>PAGES</u>
INTRODUCTION . . . . .	1
JURISDICTION . . . . .	1
STATEMENT OF THE CASE . . . . .	1
STATEMENT OF FACTS . . . . .	2
ARGUMENT . . . . .	8
I. RESPONDENT DID NOT REINSTATE CHADBOURNE BECAUSE OF HIS PHYSICAL HANDICAP . . . . .	8
II. RESPONDENT FAILS TO ESTABLISH BY PREPONDERANCE OF THE EVIDENCE ANY AVAILABLE DEFENSE . . . . .	14
A. Danger to the Health and Safety of Others . . . . .	15
1. Information Raytheon Received Regarding AIDS in 1984 . . . . .	16
2. Information Regarding AIDS Available to Respondent in 1984 . . . . .	26
3. Information Regarding AIDS Available to Respondent from 1985 Until the Present . . . . .	28
III. AIDS IS NOT CASUALLY TRANSMITTED . . . . .	34
IV. RAYTHEON DID NOT ACCOMMODATE CHADBOURNE . . . . .	51
V. COMPLAINANT IS ENTITLED TO BACKPAY, COMPENSATORY DAMAGES AND OTHER RELIEF . . . . .	54
1. Back Pay . . . . .	55
2. Compensatory Damges for Emotional Distress . . . . .	56
3. Posting Order . . . . .	58

	<u>PAGES</u>
4. Other Relief . . . . .	58
IV. PUBLIC POLICY AND AIDS DISCRIMINATION IN EMPLOYMENT . . . . .	58
CONCLUSION . . . . .	60
ATTACHMENT . . . . .	61

# TABLE OF AUTHORITIES

CASES	PAGE
<u>American National Insurance v. FEHC</u> (1982) 32 Cal. 3d 603, 186 Cal. Rptr. 345 . . . . .	9,11,12
<u>Arline v. Nassau County</u> (11th Cir. 1985) 772 F. 2d 759 . . . . .	12
<u>Bentivegna v. United States Department of Labor</u> (9th Cir. 1982) 694 F. 2d 619 . . . . .	12
<u>DFEH v. Ambylou Enterprises</u> (1982) FEHC Dec. No. 82-06 [1982-83 CEB 3] . . . . .	55,56
<u>DFEH v. Ametek</u> (1980) FEHC Dec. No. 80-11 [1980-81 CEB 4] . . . . .	9
<u>DFEH v. Bee Hive Answering Service</u> (1984) FEHC Dec. No. 84-16 [1984-85 CEB ] . . . . .	55,56
<u>DFEH v. City of Anaheim</u> (1982) FEHC Dec. No. 82-08 [1982-83 CEB 4] . . . . .	11,14,15
<u>DFEH v. City of Modesto</u> (1979) FEHC Dec. No. 79-15 [1978-79 CEB 6] . . . . .	11
<u>DFEH v. Donald Schriver, Inc.</u> (1984) FEHC Dec. No. 84-07 [1984-85 CEB 4] . . . . .	56
<u>DFEH v. Fresno County</u> (1984) FEHC Dec. No. 84-27 [1984-85 CEB 6] . . . . .	11
<u>DFEH v. Fresno Hilton Hotel</u> (1984) FEHC Dec. No. 84-03 [1984-85 CEB 2] . . . . .	58
<u>DFEH v. Jack's Restaurant</u> (1984) FEHC Dec. No. 84-06 [1984-85 CEB 5] . . . . .	56,58

# TABLE OF AUTHORITIES

CASES	PAGE
<u>DFEH v. Kingsburg Cotton Oil Co.</u> (1984) FEHC Dec. No. 84-30 [1984-85 CEB 11] . . . . .	9
<u>DFEH v. Louis Cairo</u> (1984) FEHC Dec. No. 84-04 [1984-85 CEB 6] . . . . .	11,55
<u>DFEH v. Northrop Services</u> (1983) FEHC Dec. No. 83-11 [1982-83 CEB 12] . . . . .	8,9
<u>DFEH v. San Jose</u> (1984) FEHC Dec. No. 84-18 [1984-85 CEB 6] . . . . .	9,11,14,15
<u>DFEH v. Shakey's Pizza Parlor</u> (1984) FEHC Dec. No. 84-23 [1983-84 CEB ] . . . . .	56
<u>DFEH v. Southern Pacific Transportation</u> (1980) FEHC Dec. No. 80-30 [1980-81 CEB 5] . . . . .	11,15
<u>DFEP v. Interstate Brands</u> (1979) FEHC Dec. No. 78-05 [1978-79 CEB 5] . . . . .	15
<u>Hess v. FEHC</u> (1982) 138 Cal. App. 3d 232 . . . . .	56
<u>LaRocca v. Dalsheim</u> (1983) 467 N.Y. Supp. 2d 302 . . . . .	26
<u>Lugue v. McLean</u> (1972) 8 Cal. 3d 136 . . . . .	23,30
<u>Shuttleworth v. Broward County Office of Budget and Management Policy</u> (1985) FCHR Dec. No. 85-0624 . . . . .	14
<u>Southwestern Community College v. Davis</u> (1979) 422 U.S. 397 . . . . .	12
<u>Sterling Transit Co. v. Fair Employment Practice Commission</u> (1981) 121 Cal. App. 3d 791 . . . . .	14

STATUTES

PAGE

California Administrative Code

Section 7293.6(d)	13
Section 7293.8(c)	15
Section 7293.9	52

California Evidence Code

Section 801(b)	23
----------------	----

California Government Code

Section 12920	10
Section 12926(h)	10
Section 12940(a)(1)	15
Section 12970(a)	55
Section 12993(a)	10
Section 12994	52

United States

29 U.S.C.A. Section 706(7)(B)	12
29 U.S.C.A. Section 794	11

ARTICLES

Leonard, Employment Discrimination

Against Persons with AIDS

(1985) 10 U. Dayton Law Review 681	13
------------------------------------	----

INTRODUCTION

The instant case is a prosecution under the Fair Employment and Housing Act (hereafter referred to as "the Act") for physical handicap discrimination. The facts of this case demonstrate that Respondent Raytheon Company (hereafter referred to as "the company," "Respondent," or "Raytheon") failed to reinstate Complainant, John R. Chadbourne (hereafter referred to as "Chadbourne" or "the Complainant") to his former position of Quality Control Analyst because of his physical handicap, acquired immune deficiency syndrome (hereafter referred to as "AIDS").

JURISDICTION

The Fair Employment and Housing Department's (hereafter referred to as "the Department") Exhibit 1,<sup>1/</sup> the Pleading File, established the jurisdiction of the Fair Employment and Housing Commission (hereafter referred to as "the Commission"). It is not disputed that on the date Complainant was not reinstated, Respondent had five or more employees and was an employer within the meaning of Government Code section 12926(c).

STATEMENT OF THE CASE

On April 16, 1984, Complainant filed a verified

<sup>1/</sup> Citations to the Exhibits will be as follows: (Exhibit number, roman numeral or letter). The Department's exhibits will be identified by number. The Complainant's estate's exhibits will be identified by roman numeral. The Respondent's exhibits will be identified by letter.

complaint with the Department alleging unlawful employment discrimination on the basis of physical handicap against Raytheon. On January 3, 1986, Complainant died due to complications arising from AIDS. After conducting an investigation, the Department issued an Accusation against Respondent on February 5, 1985. The Department amended the Accusation on March 8, 1985.

On June 4, 1985, Complainant's estate made a Motion to Intervene. On June 19, 1985, the Commission granted Complainant's Estate's Motion to Intervene.

A hearing was held on November 5 through 8, 1985 before the Honorable Richard J. Lopez, sitting for the Fair Employment and Housing Commission. The hearing was reconvened on January 6 through 9, 1986, in Oxnard, California. On January 13, 1986, the record was held open for an on-site view of Raytheon's plant in Goleta, California, where Chadbourne worked. The Department was represented by Gloria Barrios, Staff Attorney. The Respondent was represented by Alfred C. Phillips. The Complainant's estate was represented by Peter F. Laura. The record was held open for submission of post-hearing briefs. The instant brief is the Department's Post-Hearing Brief.

#### STATEMENT OF FACTS

John R. Chadbourne began working for Raytheon<sup>2/</sup> in

<sup>2/</sup> Raytheon manufactures military hardware, most of which is classified and secret.

Goleta, California on February 4, 1980, as an Incoming Inspector. His job duties were to inspect incoming materials in order to insure that such materials met with contractual and governmental specifications. In 1981, Chadbourne was promoted to the position of Quality Control Analyst. His job duties were to investigate failures that were reportable to the government, analyze the cause of those failures and provide corrective action (Exh. 2 pp. 5-12).<sup>3/</sup> He had no contact with the public nor with vendors. Chadbourne did have casual contact<sup>4/</sup> with Raytheon engineers and a few fellow employees (Exh. 2 49-50 : RT III 435, 13-24).<sup>5/</sup> On December 15, 1983, Chadbourne was diagnosed as having AIDS. He also had pneumocystis carinii, a type of pneumonia associated with AIDS patients. He was hospitalized at Cottage Hospital in Santa Barbara, California, from December 15, 1983 through January 12, 1984. One of his attending physicians was Dr. Stephen Hosea, a specialist in infectious disease (Ex. 2 12-16 : RT I 126, 130, 22-23, 1-5 : Exh. 4).

Following his release from the hospital, Chadbourne attempted to return to his position at Raytheon. On January

<sup>3/</sup> Department's Exhibit 2 is a transcript of the Deposition of Chadbourne taken on October 29, 1984.

<sup>4/</sup> "Casual contact" for purposes of this case means no intimate, sexual or blood to blood contact between persons (RT I 45, 14-16).

<sup>5/</sup> Citations to the Reporter's transcripts of the instant hearing will be codified as follows: (Volume number : page number : line number).



1 20, 1984, he scheduled a physical examination with Raytheon's  
2 physician, Dr. Alexander Donald. At the time of the exam,  
3 both Dr. Donald and a Raytheon nurse, Patricia Heybl knew from  
4 one of Chadbourne's attending physicians that Chadbourne had  
5 AIDS. The Complainant gave Dr. Donald a letter from Dr. Hosea  
6 stating he could return to work (Exh. 5; Ex. 2, pp. 20-21 : RT  
7 III 536-538, 9-19, 20-22, 22-23; RT V 897, 902-905, 914, 11-12,  
8 3-13, 14-25, 1-3, 23-25, 1-5, 18-25). Dr. Hosea's letter stated  
9 in part:

10 "Of note is that there have  
11 been no cases of acquired immunity  
12 deficiency syndrome in close contacts  
13 of patients with AIDS. It seems like  
14 this disease can only be transmitted  
15 by blood transfusions, sharing of  
16 intravenous needles of sexual  
17 contact (Exh. 5).

18 During the examination,<sup>6/</sup> Dr. Donald told  
19 Chadbourne he had spoken with Dr. Hosea. In that telephone  
20 conversation, Dr. Hosea had assured Dr. Donald there was no  
21 evidence AIDS can be transmitted casually (RT I 143-144, 12-25,  
22 1-17). Dr. Donald told Chadbourne that he was only a general  
23 practitioner and thus, was not qualified to make a decision as to  
24 whether or not Chadbourne could be reinstated. Dr. Donald told  
25 Chadbourne he would have to rely on the opinions of doctors who  
26 specialized in the area of infectious diseases such as  
27

<sup>6/</sup> Raytheon's physical examination of Chadbourne  
consisted of Nurse Heybl checking Chadbourne's temperature, pulse  
and blood pressure (Exh. 2 p. 21). Raytheon did not conduct a  
full medical examination of Chadbourne after he was diagnosed as  
having AIDS (RT III 584, 6-13).

1 Dr. Charles Juels, epidemiologist<sup>7/</sup> at Santa Barbara County  
2 Health Department and Dr. Hosea (Exh. 2 pp. 21-22 : RT III  
3 539-560, 567, 584, 22-25, 1-8, 14-21, 14-25 : Exh. 10). Dr.  
4 Juels had written Raytheon on January 13, 1984, regarding  
5 Chadbourne's condition stating that AIDS cannot be transmitted  
6 through casual social contact (Exh. 17 ; Exh. H : RT III 439-441,  
7 8-25, 1-25, 1-3; RT V 909-910, 14-21, 9-12).

8 Dr. Donald indicated to Chadbourne that he could return  
9 to work at Raytheon. He told Chadbourne that if he had any  
10 problems with co-workers, he should refer them to him, Dr.  
11 Donald. Dr. Donald said he was signing the necessary paperwork  
12 and would forward such papers to Frank Umanzio, Personnel  
13 Director at Raytheon (Exh. 2 pp. 22-24).

14 On January 25, 1984, Nurse Heybl and Dr. Donald met  
15 with Dr. Juels regarding Chadbourne's condition. During the  
16 meeting, Dr. Juels informed Dr. Donald and Nurse Heybl that  
17 Chadbourne's condition posed no health threat to other employees  
18 at Raytheon since AIDS is only transmitted via blood and blood  
19 products such as by sexual intercourse, blood transfusions and  
20 sharing of intravenous needles. At that time, Dr. Juels was also  
21 shown where Chadbourne worked in Raytheon. He concluded  
22 Chadbourne worked in a relatively isolated area, had no contact  
23

24 <sup>7/</sup> Epidemiology is the study of epidemics and  
25 epidemic diseases (RT II 211, 10-22, 11-13, 248). It is the  
26 science that follows the trends of a disease through the  
27 community. It brings together the facts in order to determine  
the cause of a disease and the ways in which the disease is  
transmitted. (RT II 211, 10-22.)

1 with the public, had casual contact with co-workers and faced  
2 little risk of injury. At the conclusion of the meeting, Dr.  
3 Donald told Dr. Juels, he was convinced AIDS is not spread  
4 through casual contact (RT III, 433-437, 570-573, 22-25, 1-25,  
5 1-15, 25, 1-25, 1-22 : RT V 917-918, 11-25, 1-5 : Exh 19).

6 Nurse Heybl and Dr. Donald further investigated whether  
7 Chadbourne's condition represented a risk to employees at  
8 Raytheon by contacting the United States Department of Health and  
9 Human Services, Public Health Service, Centers for Disease  
10 Control (hereafter referred to as "CDC")<sup>8/</sup> in Atlanta,  
11 Georgia. Nurse Heybl spoke with Dr. Kenneth Castro, who informed  
12 her that AIDS cannot be transmitted through casual contact, such  
13 as exists in the workplace. Nurse Heybl and Dr. Donald reviewed  
14 Morbidity and Mortality Weekly Reports (hereafter MMWR's)  
15 published by the CDC which indicated AIDS cannot be transmitted  
16 via casual contact (RT III pp. 544-545, 16-25 ; RT V 926-927,  
17 945, 2-21, 1-25 : Exh. I-A, I-B : Exh. I ; Exh. 20).

18 On January 26, 1984, Dr. Donald wrote a confidential  
19 memo to Umanzio recommending that Chadbourne be reinstated. In  
20 part, he wrote:

21 "I agree that with the material  
22 evidence we have on hand, the report  
23 from the CDC, (Center for Disease

24 <sup>8/</sup> The CDC is a branch of the Department of Public  
25 Hearing which compiles and distributes health information  
26 nationwide regarding epidemiology and surveillance of diseases.  
27 They publish a weekly bulletin (MMWR) to physicians to provide  
them with the most up-to-date information regarding such  
diseases. The CDC is recognized by experts as the authoritative  
source of information regarding AIDS (RT I 32, 137, 11-19, 2-11;  
RT II 253-255, 14-25, 1-25, 1-14; RT III 409, 17-25; RT VIII  
1333-1334, 13-25, 1-21).

1 Control), the discussion with  
2 Dr. Charles Juels and upon  
3 physical examination, this  
4 individual (Complainant) can  
5 return to his job." (Exh. 19 :  
6 RT III 598, 601, 8-12, 18-24.)

7 Despite the recommendation from Dr. Donald, Dr. Hosea,  
8 Dr. Juels, CDC and the relevant medical literature, Raytheon did  
9 not reinstate Chadbourne. He was placed on medical leave of  
10 absence (Exh. 2, pp. 27-29). In February, 1984, Nurse Heybl  
11 wrote Dr. Juels for more information regarding the  
12 communicability of AIDS. Dr. Juels wrote her back and  
13 reiterated that Chadbourne's condition posed no risk to  
14 Raytheon's employees (Exh. 16; Exh. 18 : RT III 441-444, 7-23,  
15 16-25, 1-25, 1-19; RT V 928, 1-15). An AIDS group offered to  
16 give a seminar to Raytheon employees regarding AIDS. Raytheon  
17 declined the offer and continued to refuse Chadbourne's  
18 reinstatement (RT V 961, 13-25).

19 Chadbourne continuously attempted to return to  
20 Raytheon. He lost much hope of returning to work when, in  
21 February, 1984, Umanzio told him he could not return until there  
22 was a cure for AIDS (Exh. 2 pp. 33-34). On at least three  
23 separate occasions, Chadbourne brought information to Raytheon's  
24 attention which indicated that AIDS cannot be transmitted  
25 casually (Exh. 2, pp. 35-37 : RT V 954, 11-18 : Exh I).

26 Although Chadbourne retained his employee status at  
27 Raytheon, he was not allowed to return to his former position so  
he began doing volunteer work at the Western Addiction Services  
Program at the Gay and Lesbian Center in Santa Barbara in April,



1 1984. He continued his volunteer work until October, 1984 (RT I  
2 147, 14-24 : Exh. 2, pp. 4-5).

3 In July, 1984, Chadbourne was diagnosed as having  
4 Kaposi sarcoma,<sup>9/</sup> a type of cancer associated with AIDS  
5 patients (Exh. 2 pp. 72-73 : RT I 144-145, 18-25, 1).

6 In July, 1984, Chadbourne was deemed to be totally  
7 disabled for insurance purposes. Chadbourne's main source of  
8 income was disability payments and since Raytheon would not  
9 reinstate him he could only get continued disability payments by  
10 having Dr. Hosea declare him to be totally disabled (Exh. 6 : RT  
11 I 148-149, 11-25, 1-4; RT IV 957, 3-7).

12 On January 6, 1985, Chadbourne died of complications  
13 due to AIDS (RT I 142, 2-4 : Stip. RT III 567, 4-10).

#### 14 ARGUMENT

##### 15 I

16 RESPONDENT DID NOT REINSTATE  
17 CHADBOURNE BECAUSE OF HIS PHYSICAL  
18 HANDICAP

19 Respondent violated Government Code section 12940,  
20 subd. (a) when it failed to reinstate the Complainant because he  
21 had AIDS, a physical handicap. Physical handicap discrimination  
22 is established if the Department shows by a preponderance of the  
23 evidence that a causal connection exists between a physical  
24 handicap of Complainant and an action against him by Respondent.

25 <sup>9/</sup> Heretofore, Kaposi sarcoma had been only  
26 associated with elderly Jewish men (RT I 72, 7-10).  
27

1 (DFEH v. Northrop Services (1983) FEHC Dec. No. 83-11, at p. 8  
2 [1982-83 CEB 12]; DFEH v. Ametek (1980) FEHC Dec. No. 80-11, at  
3 p. 11 [1980-81 CEB 4]; DFEH v. San Jose (1984) FEHC Dec. No.  
4 84-18, at p. 11 [1984-85 CEB 6].) The evidence need not  
5 demonstrate that Complainant's condition was the sole or even the  
6 dominant cause of the adverse action. Discrimination is  
7 established if the handicap was at least one of the factors that  
8 influenced Respondent. DFEH v. Kingsburg Cotton Oil Co. (1984)  
9 FEHC Dec. No. 84-30, at p. 21 [1984-85 CEB 11] petn. for writ of  
10 mandate granted on other grounds, app. pending; DFEH v. San Jose,  
11 supra, FEHC Dec. No. 84-18, at p. 11; DFEH v. Louis Cairo (1984)  
12 FEHC Dec. No. 84-04, at p. 14 [1984-85 CEB 3]. The Department  
13 has shown a causal connection. Respondent admits it did not  
14 reinstate the Complainant because he had AIDS. It is clear AIDS  
15 is a physical handicap within the meaning of the Act.

16 In 1982, the California Supreme Court held, that for  
17 purposes of employment discrimination, a physical handicap is any  
18 physical condition which is actually or potentially handicapping  
19 or is perceived by the employer to be potentially disabled even  
20 though the Complainant has no current job disability or  
21 job-related health risk. American National Insurance v. FEHC  
22 (1982) 32 Cal.3d 603, 610, 186 Cal. Rptr. 345, 349, 651 p.2d  
23 1151 (hereafter "ANI").

24 The Court defined "handicapping" and "handicap" very  
25 broadly. Quoting from Webster's Dictionary, it stated a  
26 "handicap" is a "disadvantage that makes achievement unusually  
27 difficult." Id at p. 609. Thus, under this broad definition, if

1 a person has a physical condition and an employer takes an  
2 adverse employment action against that person because of his  
3 physical condition, then employment achievement has been made  
4 unusually difficult for that person, and he is "physically  
5 handicapped" within the meaning of the Act.

6 The court held that the intent of Government Code  
7 section 12926, subd. (h) of the Act<sup>10/</sup> which defines  
8 "physical handicap" indicated the legislature in California  
9 intended the scope of the definition of physical handicap to be  
10 broad and not limited to present disabilities as listed in  
11 Section 12926, subd. (h). Id at 608-610. The court found, that,  
12 to hold otherwise, would be to allow arbitrary employment  
13 discrimination for future disabilities but legal protection  
14 provided for those suffering the same hardship because it is  
15 presently disabling. The court also stated that under Section  
16 12993, subd. (a), "the provisions of the Act are to be construed  
17 'liberally for the accomplishment of the purposes thereof. . ."

18 Section 12920 provides in relevant part:

19 "It is hereby declared as the  
20 public policy of this state that  
21 it is necessary 'to protect and  
22 safeguard the right and opportunity  
23 of all persons to seek, obtain,  
24 and hold employment without  
25 discrimination or abridgment on  
26 account of. . .physical handicap. . . .'"

24 <sup>10/</sup> A "physical handicap" is defined as including  
25 "impairment of sight, hearing, or speech, or impairment of  
26 physical ability because of amputation or loss of function or  
27 coordination, or any other health impairment which requires  
special education or related services." Government Code section  
12926(h).

1 Indeed it is with this mandate in mind that the Fair Employment  
2 and Housing Commission (hereafter referred to as "the  
3 Commission") has found not only high blood pressure to be a  
4 physical handicap, ANI, supra, 32 Cal.3d 603, but a variety of  
5 other conditions to be physical handicap covered under the law  
6 such as epilepsy, Louis Cairo, supra, FEHC Dec. No. 84-04, back  
7 conditions such as scoliosis and spondiolisis, San Jose, supra,  
8 FEHC Dec. No. 84-18; allergy, DFEH v. Fresno County (1984) FEHC  
9 Dec. No. 84-27 (1984-85 CEB 6); snycope or temporary loss of  
10 consciousness, dizzy spells, fainting or blackouts, DFEH v.  
11 Southern Pacific Transportation (1980) FEHC Dec. No. 80-30  
12 (1980-81 CEB 5); paralysis, colostomy, fused hip and hearing  
13 disability, DFEH v. City of Anaheim (1982) FEHC Dec. No. 82-08  
14 (1982-83 CEB 4); diabetes and angina, DFEH v. City of Modesto  
15 (1979) FEHC Dec. No. 79-15 (1978-79 CEB 6).

16 Similarly, the federal courts have taken an expansive  
17 view of the definition of physical handicap under the Federal  
18 Rehabilitation Act of 1973 (hereafter referred to as "the Rehab.  
19 Act") which provides that:

20 "No otherwise qualified handicapped  
21 individual. . . shall, solely by the  
22 reason of his handicap, be excluded  
23 from participation in, be denied the  
24 benefits of, or be subjected to  
25 discrimination under any program or  
26 activity receiving federal financial  
27 assistance. . . ."

28 U.S.C.A. §794 (West Supp. 1985).

29 An employer who receives "federal financial assistance"  
is subject to the provisions of the Rehabilitation Act and, where

1 coverage exists, the Rehab. Act makes it impermissible for an  
2 employer to discriminate against a "qualified handicapped  
3 person". A "qualified handicapped person" is a person who, in  
4 spite of his handicap, is able to perform the essential features  
5 of his or her job. Southeastern Community College v. Davis 422  
6 U.S. 397, 406, S.Ct. 2361, 60 L. Ed. 2d 980, 988 (1979).

7 An expansive definition of the conditions that  
8 constitute "handicap" under the Rehab. Act has been adopted by  
9 the federal court. In Bentivegna v. United States Department of  
10 Labor (9th Cir. 1982) 694 F.2d 619, 621, the United States Court  
11 of Appeals for the Ninth Circuit accepted without comment the  
12 undisputed proposition that a diabetic employee with high blood  
13 sugar levels, considered by his employer to be "uncontrolled,"  
14 was a handicapped person for the purposes of the Rehab. Act.

15 In Arline v. Nassau County (11th Cir. 1985) 772 F.2d  
16 759, the court held that tuberculosis, as a contagious disease,  
17 constituted a handicap within the meaning of the Rehabilitation  
18 Act. Section 504 of the Act defines a "handicapped individual"  
19 as one who (i) has a physical or mental impairment which  
20 substantially limits one or more of such person's major life  
21 activities, (ii) as a record of such impairment, or (iii) is  
22 regarded as having such an impairment. 29 U.S.C. § 706(7)(B).  
23 The language of these provisions in every respect supports a  
24 conclusion that "persons with contagious diseases are within the  
25 coverage of Section 504," according to the court.

26 In Arline, a teacher who had first contracted  
27 tuberculosis at age 31 was fired after her third relapse. She

1 contented that risk of infection to her students was minimal, or  
2 in the alternative, the school should have accommodated her  
3 handicap by transferring to a temporary position teaching less  
4 susceptible persons. According to the court, since tuberculosis  
5 substantially limits one or more major life activities, it is a  
6 physical handicap within the meaning of the Rehab. Act.  
7 Likewise, a contagious disease like AIDS also limits major life  
8 activities.

9 A person with AIDS is physically handicapped under  
10 state law because AIDS damages the immune system<sup>11/</sup> to such  
11 an extent that a person with AIDS is not able to fight off  
12 opportunistic infections and those infections proceed unhindered  
13 to damage the body in a variety of ways. Among those infections  
14 are Kaposi sarcoma and carinii pneumonia as found in Chadbourne's  
15 case. (Leonard, Employment Discrimination Against Persons with  
16 AIDS (1985) 10 U. Dayton Law Review 681; RT I 29-30, 18-25,

17 1-2.) A person suffering from AIDS suffers a tremendous  
18 disability, which includes weight loss, fatigue, diarrhea and  
19 lesions associated with Kaposi sarcoma (RT I 31, 16-22). Even  
20 assuming that AIDS is not presently disabling, the syndrome  
21 progresses and becomes disabling (RT I 31, 150, 16-22, 22-24).  
22 Moreover, the mortality rate of persons afflicted with AIDS after

23  
24 <sup>11/</sup> The Commission's Regulation 7293.6 subd. (d)  
25 Cal. Admin. Code, Tit. 2, defines the phrase in Government Code  
26 section 12926(h) "impairment of physical disability due to loss  
27 of function" to include: "[A]ny physiological disorder or  
condition . . . affecting one or more of the following body  
systems: neurological, musculoskeletal, special sense organs,  
respiratory, including speech organs, cardiovascular,  
reproductive, digestive, genitourinary, hemic and lymphatic, skin  
and endocrine."



1 two years is eighty percent, after three years, it is nearly one  
2 hundred percent (RT I 84, 173, 3-7, 10-11). Since AIDS attacks  
3 the immune system and other body system, AIDS qualifies as a  
4 physical handicap under the Commission's regulations.

5 The Florida Commission on Human Relations recently  
6 found AIDS to be a physical handicap within the meaning of  
7 Florida's definition of physical handicap and recent state and  
8 federal cases. Shuttleworth v. Broward County Office of Budget  
9 and Management Policy (1985) FCHR Dec. No. 85-0624.

10 Thus, Chadbourne's condition is a physical condition  
11 within the meaning of the Act, alternatively, because he was  
12 disabled during the relevant time period, he was potentially  
13 going to be disabled and/or he was perceived to be disabled by  
14 Raytheon when they refused to reinstate him. San Jose, supra,  
15 FEHC Dec. No. 84-18, at pp. 11-12; ANI, supra, 3d Cal. 3d 603, at  
16 pp. 608-610.

17 Having established that Respondent discriminated  
18 against Complainant because of his physical handicap in violation  
19 of Government Code section 12940, subd. (a), the burden then  
20 shifts to Respondent to establish an affirmative defense.

## 21 II

### 22 RESPONDENT FAILS TO ESTABLISH 23 BY PREPONDERANCE OF THE 24 EVIDENCE ANY AVAILABLE DEFENSE

25 Respondent seeks to rely on one affirmative defense,  
26 which it must establish by preponderance of all the evidence.  
27 (Sterling Transit Co. v. Fair Employment Practice Commission

1 (1981) 121 Cal. App. 3d 791, 794 at 796; DFEH v. City of Anaheim  
2 Police Department, supra, FEHC Dec. No. 82-08, at pp. 8, 12, 14  
3 [1982-83 CEB 4]; DFEP v. Interstate Brands (1979) FEHC Dec. No.  
4 78-05, at p. 17, fn. 12; DFEH v. San Jose, supra, FEHC Dec. No.  
5 84-18, at p. 12.)<sup>12/</sup> Respondent has not met its burden.

### 6 A. Danger to the Health and 7 Safety of Others

8 Respondent argues that Complainant would "endanger. . .  
9 the health and safety of others" if he had been allowed to return  
10 to his former position at Raytheon. (Government Code Section  
11 12940, subd. (a)(1).) To establish this defense, the evidence  
12 that Complainant's condition would create danger "significantly  
13 greater" than that posed by someone performing the job who was  
14 not afflicted with AIDS. DFEH v. City of Anaheim Police  
15 Department, supra, FEHC Dec. No. 84-08, at pp. 14-15; DFEH v.  
16 Southern Pacific Transportation Co., supra, FEHC Dec. No. 80-30,  
17 at p. 8; DFEH v. San Jose, supra, FEHC Dec. No. 84-18, at pp.  
18 16-17; Cal. Admin. Code, tit. 2, § 7293.8, subd. (c).)

19 Respondent argues that Chadbourne's condition posed a

20  
21  
22 <sup>12/</sup> Respondent did not dispute that Complainant  
23 was physically able to perform the job of Quality Control Analyst  
24 at the time the company failed to reinstate him, and thus asserted  
25 no affirmative defense on that ground or that Chadbourne would  
26 endanger his health and safety if he returned to work. (Govern-  
27 ment Code Section 12940, subd. (a)(i); RT III 463, 23-25; RT V  
881, 5-16; RT VII 1275-1276, 1-25 : Exh. 21). Respondent also  
claims no bona fide occupational qualification (BFOQ) affirmative  
defense. (Government Code Section 12940; RT VI 1161-1162, 25,  
1-13.)

1 danger of infection to other co-workers at Raytheon. Yet,  
2 Respondent did not offer a scintilla of evidence which supports  
3 the proposition that AIDS can be transmitted to another person  
4 via casual contact which existed in the workplace at Raytheon.  
5 To the contrary, the information Raytheon received during the  
6 relevant time period and the expert medical evidence submitted at  
7 the hearing all pointed to the fact that AIDS is only transmitted  
8 through semen, blood and blood by-products. The Florida  
9 Commission on Human Relations rejected the company's contention  
10 that AIDS was easily transmissible in the workplace.  
11 Shuttleworth v. Broward County, supra, FCHR Dec. No. 85-0624.

12  
13 1. Information Raytheon  
14 Received Regarding AIDS  
15 in 1984

16 On January 16, 1984, Dr. Hosea, an expert in infectious  
17 diseases and a doctor who treats persons with AIDS who was  
18 Complainant's personal physician wrote Raytheon regarding  
19 Chadbourne's condition. In pertinent part, Dr. Hosea wrote:

20 "Of note is that there have  
21 been no cases of acquired  
22 immunity deficiency syndrome  
23 in close contacts of patients  
24 with AIDS. It seems like  
25 this disease can only be  
26 transmitted by blood trans-  
27 fusions, sharing of intravenous  
needles or sexual contact.

(Exh. 5; Exh. 2 pp. 12, 15, 18, 31 : RT III 536-537, 9-25, 1-6.)

In January, 1984, Dr. Donald and Dr. Hosea had spoken  
by telephone. In that conversation, Dr. Hosea had assured Dr.  
Donald that there was no evidence that AIDS could be transmitted

casually (RT I 143-144, 12-25, 1-17).

Dr. Juels, epidemiologist at Santa Barbara County  
Health Department, had also written Raytheon on January 13, 1984.  
In his letter, Dr. Juels stated:

"Enclosed is a statement about  
AIDS issued by the Department  
of Health and Human Services  
in August, 1983. As indicated  
in the passage I underlined,  
AIDS is believed to be trans-  
mitted only through sexual  
contact, blood or blood products.  
Casual social contact, family  
contact (other than sexual) as  
well as occupational contact in  
health care settings (physicians  
and nurses caring for AIDS  
patients) have not been impli-  
cated in the transmission of  
AIDS.

Therefore, contact of employees  
to an AIDS appears to pose no  
risk from all evidence accumu-  
lated to date."

(Exh. 17 : RT III 439-441, 8-25, 1-25, 1-3; RT V 909, 11-16.)

Dr. Juels also attached a newsletter from the  
Department of Health and Human Services issued in August, 1983.  
The newsletter said:

"How contagious is AIDS?

No cases have been found to  
date where AIDS has been trans-  
mitted by casual or even close  
daily contact with AIDS patients  
or persons in the high risk  
groups. For instance, family  
members other than sex partners  
of AIDS victims have not  
developed AIDS. Ambulance  
drivers, police, and firemen  
who have offered emergency  
assistance to AIDS patients  
have not fallen ill. Nurses,  
doctors, and health care  
personnel have not developed

1 AIDS from exposure to AIDS  
2 patients.

3 Although other diseases may  
4 be transmitted through saliva,  
5 there is no evidence that  
6 AIDS is transmitted by sweat  
7 or saliva.

8 However, health care providers  
9 and laboratory workers should  
10 follow careful procedures when  
11 handling any blood and tissue  
12 samples from patients with  
13 potentially transmissible  
14 disease, including AIDS."

15 (Exh. H : RT V 909-910, 17-25, 9-12.)

16 On January 25, 1984, Nurse Heybl and Dr. Donald met  
17 with Dr. Juels regarding Chadbourne's condition. During that  
18 meeting, Dr. Juels informed Dr. Donald and Nurse Heybl that  
19 Chadbourne's condition posed no health threat to other employees  
20 at Raytheon since AIDS is only transmitted through blood and  
21 blood by-products by sexual intercourse, blood transfusions and  
22 sharing of intravenous needles. After viewing where Chadbourne  
23 actually worked, Dr. Juels still felt Chadbourne's condition pose  
24 no health threat to Raytheon's employees. (RT 433-436, 473-474,  
25 570-573, 10-25, 1-25, 1-16, 18-25, 1, 1-25, 1-22, RT V 917-918,  
26 11-25, 1-5 : Exh. 19.)

27 On February 10, 1984, Dr. Juels again wrote Raytheon.  
He said:

A couple of days ago I talked  
with Irene Heindl, MD, a  
physician who works with the  
State of California VD control  
program. She stated that she  
and the State's infectious  
disease control staff agree  
with CDC's position on the

communicability of AIDS.  
According to her, the State,  
and CDC, as well as myself,  
AIDS is transmitted via very  
close personal contact, such  
as sexual activity, and  
through the use of blood  
products or sharing needles  
during illicit use of drugs.  
Casual social contact, as  
would occur in an occupational  
setting, poses no risk of  
transmission, according to all  
available data and the opinions  
of experts."

(Exh. 18 : RT III 441-445, 7-23, 8-23; RT V 928, 1-15.)

In January, 1984, Nurse Heybl contacted the CDC in  
Atlanta, Georgia. Nurse Heybl spoke with Dr. Castro, who  
informed her that AIDS cannot be transmitted through casual  
contact such as exists in the workplace (RT V 926-927, 945, 2-25,  
1-21, 1-24 : Exh. 20).

In 1984, Dr. Donald and Nurse Heybl reviewed newspapers  
and periodicals, as well as medical literature regarding AIDS.  
They reviewed the following MMWRs (March 4, 1983):

"No AIDS cases have been  
documented among health care  
or laboratory personnel caring  
for AIDS patients or processing  
laboratory specimens. To date,  
no person-to-person transmission  
has been identified other than  
through intimate contact or  
blood transfusion. (Exh. I,  
Exh. 12, Exh. I-A.)

(September 2, 1983):

"Acquired immunodeficiency  
syndrome (AIDS) was first  
recognized in 1981. The  
epidemiology of AIDS is  
consistent with the hypothesis  
that it is caused by a



transmissible infectious agent (1-3). AIDS appears to be transmitted by intimate sexual contact or by percutaneous inoculation of blood or blood products. There has been no evidence of transmission by casual contact or airborne spread, nor have been cases of AIDS in health-care or laboratory personnel that can be definitely ascribed to specific occupational exposures. (Footnote omitted.) (Exh. I-A.)

(September 9, 1983):

Eighty-nine percent of patients with AIDS can be placed in groups that suggest a possible means of disease acquisition: 71% are men with homosexual or bisexual orientations; 17% (including 51% of the women) have used intravenous (IV) drugs; and 1% are hemophiliacs. Of the other 11% of cases, means of disease acquisition is less clear, but in none of these cases does casual contact appear to be involved. This group of 11% includes cases for whom information about risk factors is either absent or incomplete (3% of total), and others whose risk and exposure factors are under investigation. The latter includes patients who were born in Haiti but are now living the United States (5% of total). Also under investigation are heterosexual partners of persons with AIDS or persons at increased risk of AIDS (1% of total), and those exposed to blood transfusions (1% of total). Finally, some thoroughly investigated cases belong to none of the above groups (1% of total).

AIDS cases have been classified

into groups at greatest risk of acquiring the disease. Classification of certain groups as being more closely associated with the disease has been misconstrued by some to mean these groups are likely to transmit the disease through non-intimate interactions. This view is not justified by available data. Nonetheless, it has been used unfairly as a basis for social and economic discrimination.

The occurrence of AIDS cases among homosexual men, IV drug abusers, persons with hemophilia, sexual partners of members of these groups, and recipients of blood transfusions is consistent with the hypothesis that AIDS is caused by an agent that is transmitted sexually or, less commonly, through contaminated needles or blood. About 91% percent of reported cases have occurred in these patient groups. Among the remaining cases, there has been no evidence that the disease was acquired through casual contact with AIDS patients or with persons in population groups with an increased incidence of AIDS. AIDS is not known to be transmitted through food, water, air, or environmental surfaces. (Footnote omitted; underlined for emphasis.) (Exh. III; Exh. I-A.)

(July 13, 1984):<sup>13/</sup>

Until the usefulness of positive and negative serologic tests is fully established, all individuals in populations with

<sup>13/</sup> There was no MMWR issued on June 26, 1984, regarding AIDS (Exh. I-A).

1 increased incidences of AIDS,  
2 as well as those outside such  
3 groups with positive tests,  
4 should comply with the March  
5 1983 Public Health Service  
6 recommendations for the preven-  
7 tion of AIDS to minimize the  
8 transmission of the syndrome  
9 (16). Abstention from IV drug  
10 usage and reduction of needle-  
11 sharing and other use of  
12 contaminated needles by IV  
13 drug users should also be  
14 effective in preventing  
15 transmission of the virus and  
16 of AIDS. There remains no  
17 evidence of transmission of  
18 AIDS through casual contact.  
19 Prevention measures should  
20 stress that transmission has  
21 been only through intimate  
22 sexual contact, sharing of  
23 contaminated needles, or,  
24 less frequently, through  
25 transfusion of blood or blood  
26 products. (Underlined for  
27 emphasis.) (Exh. 14; Exh. I-A.)

15 They reviewed a Food and Drug Administration Bulletin  
16 published by the United States Department of Health and Human  
17 Services in August, 1983, which said:

18 AIDS has been seen predominantly  
19 in male homosexuals with  
20 multiple sexual partners,  
21 Haitian immigrants, and  
22 intravenous drug abusers.  
23 Because I.V. drug abusers are  
24 at high risk, it must be  
25 presumed that AIDS can be  
26 transmitted by exposure to  
27 contaminated needles. This  
underscores the importance of  
exercising caution in handling  
needles. AIDS has also been  
seen less commonly in persons  
with hemophilia A and very  
rarely in individuals receiving  
blood transfusions. There have  
also been reports of AIDS in  
sexual contacts of AIDS  
patients or persons at

1 high risk for AIDS. Casual  
2 contact has not been  
3 reported to cause AIDS.  
4 Four cases have been reported  
5 in health-care personnel who  
6 were found not to have risk  
7 factors for AIDS. However,  
8 there was no evidence that  
9 these individuals acquired  
10 the syndrome through exposure  
11 in the hospital."

7 (Footnotes omitted. Underlined for emphasis.)

8 Dr. Donald and Nurse Heyble reviewed several articles  
9 directed at health care professionals who may come into contact  
10 with persons with AIDS. These articles conclude that spread of  
11 AIDS through casual contact is not the manner in which the  
12 syndrome is transmitted. These articles do not state that  
13 co-workers of a person with AIDS run any risk of infection.  
14 (Exh. I-A, items numbered 3, 4, 8-11, 13, 17-18; Exh. I-B, item  
15 numbered 9.)

16 The remainder of the written material relied on by  
17 Respondent in 1984, consists of articles from newspapers and  
18 magazines regarding AIDS. These articles are not the type of  
19 material which experts normally rely on and should be accorded no  
20 weight at all. Luque v. McLean (1972) 8 Cal. 3d 136; Cal. Evid.  
21 Code, section 801, subd. (b). In short, Respondent did not prove  
22 by preponderance of the evidence available in 1984, that  
23 Chadbourne's condition posed a significantly greater risk of  
24 infection to his co-workers.

25 Respondent next argues that 5 percent of persons  
26 afflicted with AIDS fall outside of the high risk

27 ///

1 groups.<sup>14/</sup> Respondent contends this 5 percent demonstrates  
2 that AIDS must be transmitted from contact other than blood  
3 and/or semen and thus, AIDS could be acquired by casual contact.

4 Respondent's argument is without merit. Respondent has  
5 not carried its burden in proving that AIDS can in fact be  
6 transmitted casually in a manner which would present a  
7 "significantly greater danger" to Chadbourne's co-workers.

8 The 5 percent of persons afflicted with AIDS who fall  
9 outside the high risk groups have not acquired AIDS through  
10 casual contact. Experts testified that the 5 percent figure is  
11 exaggerated. The 5 percent figure includes persons with AIDS of  
12 whom there was not sufficient information to determine whether or  
13 not they are members of a high-risk group. They then, must be  
14 classified by the CDC in a group outside of the high-risk groups,  
15 but that does not necessarily mean that they do not fall without  
16 the high-risk groups or that such persons acquired AIDS by casual  
17 means. In fact, it is likely that this 5 percent of persons are  
18 within the high-risk groups. (Exh. A : RT I 89, 114-115, 155,  
19 6-19, 8-25, 1-2, 7-11, 17-25; RT II 212- 213, 229, 265-267,  
20 309-310, 22-25, 1-12, 3-15, 319-320, 17-25, 1-25, 1-15, 3-25,  
21 1-8, 10-25, 1-4.) The figure is difficult to assess because

22  
23  
24 <sup>14/</sup> Groups at highest risk of acquiring AIDS -  
25 homosexual or bisexual men, intravenous drug abusers, recipients  
26 of contaminated blood, sexual contact of persons infected with  
27 the AIDS virus (hereafter HTLV-111/LAV), and children born to  
mothers infected with HTLV-111/LAV. (MMWR, August 30, 1985; RT I  
30-31, 41-42, 20-25, 1, 22-25, 1; Exh. II; Exh. III; Exh. VII :  
RT II 225-259, 15-25, 1-25, 1-14.)

1 in order to know whether a person with AIDS falls inside a high  
2 risk group, that person must admit that he is gay, bisexual, or  
3 an intravenous drug user, life styles which carry a stigma in our  
4 society. (RT I 117, 10-16; RT II 212-214, 265-267, 309-310,  
5 22-25, 1-25, 1, 17-25, 1-25, 1-5, 7-25, 1-8; RT III 457, 2-7; RT  
6 VIII 1343-1344, 16-25, 1-15.)

7 All the experts who testified stated that their  
8 patients with AIDS or AIDS-related conditions<sup>15/</sup> fall  
9 within the high-risk groups. (RT I 90, 156, 12-16, 3-9; RT VIII  
10 1344, 16-22; RT VI 1068, 12-15.) Experts also testified that if  
11 AIDS were indeed spread by casual contact, then there would be no  
12 high-risk groups contacting the syndrome, all people would be at  
13 risk, not just the high-risk groups. Such is not the case  
14 because AIDS is not spread casually. (RT I 113-114, 190-191,  
15 13-25, 1-7, 14-17, 24-25, 1-2; Rt II 267, 7-15).

16 Respondent's use of a small figure of persons afflicted  
17 with AIDS who are outside of the high-risk groups is not  
18 persuasive that AIDS is transmitted by casual contact.  
19 Respondent did not carry its burden.  
20  
21  
22  
23

24  
25 <sup>15/</sup> AIDS-related conditions include AIDS-related  
26 complex (hereinafter referred to as "ARC") persons who are ill  
27 but do not have AIDS and persons who have HTLV-111-virus but do  
not have AIDS (RT III 413-414, 2-25, 1-7).



2. Information Regarding AIDS  
Available to Respondent in  
1984

Respondent contends in 1984 medical knowledge regarding AIDS was insufficient for an employer to determine what was the risk of infection to employees if they were exposed to someone who had AIDS. Respondent's argument is without substance. As early as 1983, a case brought by prisoners against New York Department of Correctional Services found AIDS was not casually transmitted. La Rocca v. Dalsheim (1983) 467 N.Y. Supp. 2d 302.

In 1984, the level of medical knowledge about AIDS was such that the Santa Barbara County Health Department, the CDC, Chadbourne's private physician, and Raytheon's doctor all recommended that Chadbourne be allowed to return to his former position at Raytheon (Exh. 19, see pp. 16-19). The literature reviewed by Raytheon in 1984, supports the recommendation. (See pp. 16-23).

Experts agreed that enough information was known about AIDS in 1984 by the medical community to indicate that AIDS was not spread by casual means. (Exhs. I-IV : RT I 33, 11-18.) For example, in March, 1983, the MMWR<sup>16/</sup> reported that no AIDS cases had been documented among health care nor laboratory personnel caring for AIDS patients or processing laboratory specimens which would indicate that in 1983, casual contact with person

<sup>16/</sup> The Report contains recommended guideline for health care workers which do not urge extraordinary safety measures when health care workers are not in contact with AIDS' patients' bodily fluids.

with AIDS did transmit the syndrome (Exh. I : RT I 33, 11-18).

Although it was not announced in the United States that the virus was isolated until the Spring of 1984, the medical community believed AIDS was caused by an infectious agent such as a virus before 1984. As early as 1982, the CDC had ruled out casual transmission of AIDS. (Exhs. I-III : RT I 35-37, 65, 96, 111, 123, 16-25, 12-24, 2-21, 11-17, 8-18, 17-25, RT II 209, 224-225, 260, 285-286, 303-304, 425, 18-23, 12-25, 1-3, 13-24, 7-25, 1-5, 25, 1-25, 1-15; Exh. 11 : RT 410-411, 12-25, 1-16 : Exh. 12.)

Respondent implies, but did not prove that there was insufficient data available in 1984, to indicate that AIDS was not spread by casual contact. Respondent did not prove by preponderance of the evidence its affirmative defense.

It is important to note the steps Raytheon did not take when it was determining whether or not it would reinstate Chadbourne. The company never hired a consultant or medical expert during the relevant time period. Instead, the company relied upon the opinion of its own doctors whose background in epidemiology and infectious disease in general and AIDS in particular was woefully inadequate.<sup>17/</sup> (RT III 578-581, 14-25, 24-25, 1-25, 1-2 : Exh. AA.)

Although Raytheon knew Chadbourne had a fatal condition, it set up no timetable as to when it would decide whether or not Chadbourne could be reinstated. (RT VI 11-49, 9-11.) The

<sup>17/</sup> Raytheon even ignored the opinion of its own doctors. (Exh. 19.)

1 company refused to conduct a training of its employees regarding  
2 AIDS, even though such a training had been offered. (RT V 961,  
3 13-25.) To date, Raytheon still does not have a policy regarding  
4 AIDS. (RT VI 1161-1162, 25, 1-2.) The company never gave  
5 Chadbourne a full medical examination to determine whether or not  
6 he posed any risk of infection to others. (See fn. 6.)

7 The record clearly shows Raytheon had an occupational  
8 nurse research the vital issue as to whether or not Chadbourne  
9 posed any risk of infection to other employees. The company then  
10 ignored the advice of the CDC, the Santa Barbara County Health  
11 Department, their own doctor, Chadbourne's doctor and stalled for  
12 time. Time was on the company's side and Chadbourne died without  
13 being allowed to return to work.

14  
15 3. Information Regarding AIDS  
16 Available to Respondent  
17 from 1985 Until the Present

18 Knowledge about the transmission of AIDS since 1985  
19 cannot be relied upon by Raytheon because Raytheon did not use  
20 such knowledge in its decision not to allow Chadbourne to return  
21 to work. Only information used by Raytheon during 1984 is  
22 relevant in the instant case. Assuming arguendo, that Raytheon  
23 is allowed to use such testimony and material, Raytheon still has  
24 not carried its burden by demonstrating Chadbourne posed a  
25 "significantly greater" risk of infection than other employees  
26 who did not have AIDS.

27 Raytheon's review of material in 1985, until the time  
of the hearing does not support the theory that AIDS is spread by

1 casual transmission. In fact, material relied on by Raytheon is  
2 persuasive that AID is not transmitted by casual contact. In  
3 MMWR dated January 11, 1985:

4 "Epidemiologic data suggest  
5 that the virus has been  
6 transmitted through intimate  
7 sexual contact; sharing  
8 contaminated needles; trans-  
9 fusion of whole blood, blood  
10 cellular components, plasma,  
11 or clotting factor concentrates  
12 that have not been heat treated,  
13 or from infected mother to  
14 child before, at, or shortly  
15 after the time of birth. No  
16 other products prepared from  
17 blood (e.g. immunoglobulin,  
18 albumin, plasma protein fraction,  
19 hepatitis-B vaccine) have  
20 been implicated, nor have cases  
21 been documented to occur through  
22 such common exposures as sharing  
23 meals, sneezing or coughing, or  
24 other casual contact."

25 (Exhs. I-A, I-B.) (Underlined for emphasis.)

26 In "Facts About Aids" published by the Department of  
27 Health and Human Services in 1985, the Department of Health and  
Human Services stated:

"No cases have been found where  
AIDS has been transmitted by  
casual contact with AIDS patients  
or persons in the high risk  
groups. Ambulance drivers,  
police, and firemen who have  
assisted AIDS patients have not  
become ill. Nurses, doctors,  
and health care personnel  
have not developed AIDS from  
exposure to AIDS patients.

However, health care and  
laboratory workers should  
follow careful procedures  
when handling blood and  
tissue samples from patients  
with potentially transmissible

diseases, including AIDS."

(Exh. I-A.)

The remaining articles which Respondent relied on in 1985, are from newspapers and magazines. Such material should not be given any weight. Luque v. Mclean, supra, 8 Cal. 3d 136.

Respondent also relies on the testimony of three experts<sup>18/</sup> to support their affirmative defense that Chadbourne posed a "significantly greater" risk of infection than other employees. Raytheon's experts should be accorded no weight or little weight because they had little or no experience with persons with AIDS nor did they possess the medical qualifications of the Department's and Complainant's expert witnesses .

a. Frank R. Cox, PH.D.

Dr. Cox is a professor of psychology at Santa Barbara City College. He has written books on marriage and family. He has never treated persons with AIDS. He has no medical background. he is not qualified to render any opinion regarding the epidemiology of AIDS or its affect on people. (RT II 342-344, 359-361, 23-25, 1, 10-14, 3-16, 19-21, 6-15.)

b. R. S. Mendelsohn, M.D.

Dr. Mendelsohn is a pediatrician. He has written several books, which by his own admission, place him outside of

<sup>18/</sup> Interestingly, Peter R. Wolfe, M.D. who originally was scheduled to testify on behalf of the Respondent, testified instead for the Department.

the medical establishment.<sup>19/</sup> He has not treated anyone with AIDS nor been involved with AIDS research. He is not an epidemiologist nor certified in infectious disease.

Dr. Mendelsohn does not recognize that AIDS is caused by the HTLV-III virus.<sup>20/</sup> He couldn't even define the term "casual contact." He felt AIDS could be transmitted by being in the same room with someone who had AIDS, although he could cite no documented cases which supported his theory. Dr. Mendelsohn feels persons afflicted with AIDS should be isolated from society.

Dr. Mendelsohn did not know what are the high-risk groups which are most likely to acquire AIDS. He couldn't remember the number of people involved nor when the CDC conducted the studies of families living with persons who have AIDS (hereafter "family studies). He didn't know the names of the tests which indicate the presence of HTLV-III virus in the blood. The didn't know how the tests were administered. He didn't even know when the AIDS virus was first isolated or who isolated the virus. He didn't know the symptoms of Kaposi sarcoma or what

<sup>19/</sup> Dr. Mendelsohn does not believe in modern medicine, doctors, hospitals, birth control, immunization and floridization (RT VI 684-686, 738-740, 17-20, 7-12, 25, 1-3, 25, 1-2, 19-25, 1).

<sup>20/</sup> He also does not recognize the scientific community's acceptance of the causes of lung cancer. He thought it is possible that a person might catch lung cancer by standing in same room with someone who has lung cancer (RT IV 728-729, 14-23, 6-23).



1 percentage of persons with AIDS have this form of cancer. (RT IV  
2 628, 635, 640-642, 670, 674, 676, 700, 705, 707-710, 714-716,  
3 726, 734-735, 751-752, 756-757, 13-16, 9-25, 4-8, 25, 1, 5-13,  
4 19-25, 6-14, 11-12, 8-11, 13-18, 23-25, 1-5, 16-21, 24-25, 1-9,  
5 19-25, 1-4, 14-17, 7-22, 17-18, 17-25, 1-2, 18-25, 1-5, 23-25,  
6 1-3 : Exh. L.)

7 Dr. Mendelsohn relies on confusing material to support  
8 his testimony that AIDS is transmitted by casual means. The  
9 material does not support such a theory. He offered no  
10 scientific data to support his theory. The material at best  
11 seems to imply that different bodies are dealing with aspects of  
12 AIDS in different manners.

13 For example, the fact that Connecticut plans to isolate  
14 prisoners with ARC bears no relevance to the issue at hand of  
15 AIDS in the workplace. Prisons are places where there are high  
16 instances of violence, traumatic sex, and homosexual activity,  
17 perhaps coerced sex. Isolation procedures in a prison population  
18 of person with ARC may be reasonable but not relevant as to  
19 whether or not Chadbourne should have been allowed to return to  
20 work at Raytheon. (Exh. P.) Or the fact that the military may  
21 screen its personnel for AIDS may be reasonable given that  
22 military personnel may have to donate blood to other military  
23 personnel in the field on an emergency basis. (Exh. O.) The  
24 battlefield or the prison is a very different context from the  
25 workplace at issue in this case. Dr. Mendelsohn's testimony and  
26 evidence offered by him should not be given any weight or little  
27 weight by the trier of fact.

1 d. S. A. Armentrout, M.D.

2 Dr. Armentrout is a professor of medicine at the  
3 University of California, Irvine Medical School (hereafter  
4 U.C.I. Medical School). He is a practicing physician. He is  
5 chief of the division of hematology and oncology at U.C.I.  
6 medical school.<sup>21/</sup> (RT VI 1005, 6-11 : Exh. 2.)

7 He has treated between 25-100 persons with AIDS. (RT  
8 VI 1017-1018, 20-25, 1-2.) Dr. Armentrout testified that 7 to  
9 10 percent of the cases of AIDS fall outside the well-known high  
10 risk groups.<sup>22/</sup> he did not specify what source he drew  
11 this figure or what period of time he was using (RT VI 1023,  
12 1025-1026, 19-22, 13-25, 1-11). Dr. Armentrout testified that  
13 the 7 to 10 percent of AIDS cases outside the known risk groups  
14 must mean that there is some other mode of transmission of AIDS  
15 other than semen, blood or blood-by product. The Department  
16 already discussed this issue previously. (See pp. 23-25.)

17 Dr. Armentrout also testified that there was not  
18 sufficient information known about AIDS in 1984 for anyone to  
19 know what was the risk of infection of a person with AIDS in the  
20 workplace. (RT VI 1033, 13-22.) The Department has previously  
21 discussed Respondent's argument. (See pp. 26-28.) Although Dr.  
22 Armentrout stated that an employee with AIDS should not return to  
23 work due to possible risk of infecting others, he did not qualify  
24

25 <sup>21/</sup> Hematology is the study of disease of the  
26 blood. Oncology is the study or the treatment of cancer (RT VI  
27 1006, 7-14).

<sup>22/</sup> All other experts testified the figure is  
approximately 5 percent (See pp. 23-25.)

1 his view nor know the facts of the case.

2 Dr. Armentrout could not cite one documented case  
3 whereby a person caught AIDS through casual contact. (RT VI  
4 1051, 20-22.) He couldn't specify the degree of risk other  
5 employees faced if a person with AIDS worked amongst them. (RT  
6 VI 1056, 1-3.) He didn't know Chadbourne's name or his work  
7 duties. (RT VI 1057, 18-20, 24-25.) He didn't know how much  
8 contact Chadbourne had with other employees. (RT VI 1058, 1-3.)  
9 He hadn't even visited the workplace in question. (RT VI 1058,  
10 4-10.) Finally, Dr. Armentrout could cite no source for his view  
11 that casual transmission of AIDS might occur.

12 Dr. Armentrout's testimony should be given little  
13 weight or no weight at all because of his limited knowledge and  
14 experience in the field, his uncertainty of Chadbourne's degree  
15 of risk to other workers and his lack of scientific sources.

16 In short, Respondent has not met its burden.

### 18 III

#### 19 AIDS IS NOT CASUALLY TRANSMITTED

20 Assuming that Respondent has met its burden, the  
21 Department and Complainant can rebut any implication that AIDS is  
22 casually transmitted by the overwhelming evidence regarding the  
23 transmission of AIDS and the testimony and qualifications of the  
24 Department's and Complainant's expert witnesses. In November,  
25 1985, the CDC issued guidelines for employers regarding AIDS in  
26 the workplace. The Report stressed AIDS is not casually  
27 transmitted. (MMWR November 15, 1985.)

#### 1 1. Neil R. Schram, M.D.

2 Dr. Schram is an internist. His background in AIDS is  
3 extensive. He is chairman of the Los Angeles/County AIDS Task  
4 Force since 1984. (Exh. 3 : RT I 27-30, 17-21, 22-25, 1-4,  
5 3-10.) Dr. Schram has often lectured on AIDS. (RT I 30, 78,  
6 9-14.) Dr. Schram attended a medical conference presented by the  
7 CDC in October, 1985, to serve as a consultant in drawing up  
8 employment guidelines regarding employees who have AIDS. (RT I  
9 55, 17-22.)

10 Dr. Schram has treated approximately 43 patients with  
11 AIDS or AIDS-related conditions since 1983. (RT I 64-65, 15-22,  
12 1.) Eighty percent of Dr. Schram's practice deals with AIDS.  
13 (RT I 112, 14-23.)

14 Based on his background and experience, his reading of  
15 the relevant medical literature, Dr. Schram testified that AIDS  
16 is transmitted by intimate sexual conduct and by blood. (RT I  
17 30, 13-16 : Exhs. I-X.) Dr. Schram stressed the importance of  
18 the health care and family studies. As early as March, 1983, the  
19 CDC reported that no cases of AIDS have been documented any  
20 health care workers. (Exh. I.) In 1984, the CDC found that 51  
21 health care workers who had been exposed to AIDS patients' bodily  
22 fluids by needle stick injuries, cuts, etc. did not have AIDS.  
23 (Exh. IV.) In 1985, the British Medical Journal released a study  
24 that demonstrated 68 health care workers who cared for AIDS  
25 patients had not tested positive for the HTLV-III antibody.  
26 (Exh. VIII : RT I 49-50, 24-25, 1-14.) In 1985, the CDC again  
27 reported out of 1758 health care workers who had cared for AIDS

1 patients, only 26 tested positive for the AIDS antibody. Only 3  
2 of the 26 workers did not belong to high-risk groups.  
3 Information was not available on 1 of the 3 persons. As to the  
4 remaining 2 people, they had both had needle stick injuries from  
5 2 different AIDS patients. (Exh. IV : RT I 51-52, 22-25, 1-15.)  
6 This finding indicates that if people who work directly with AIDS  
7 patients and come into contact with their bodily fluids do not  
8 catch AIDS then co-workers of persons with AIDS who have no  
9 contact with a person's semen, blood and blood-by products have  
10 no risk of infection.<sup>23/</sup>

11 In 1985, the Journal of American Medical Association  
12 found that family members who lived with persons with AIDS did  
13 not catch AIDS. (Exh. V.) In 1985, the CDC found that none of  
14 the family members of over 12,000 persons with AIDS did not have  
15 AIDS. In particular, the CDC monitored 6 studies of family  
16 members of person with AIDS. Not one of those persons had the  
17 HTLV-III virus. (Exh. VII : RT I 47, 6-25.) Another study  
18 reported that grandmothers and foster mothers of children with  
19 AIDS, who had cared for these children since infancy were not  
20 infected by the AIDS virus.<sup>24/</sup> (Exh. X : RT I 53-54,  
21  
22

23 <sup>23/</sup> In 1983, the CDC found no cases of AIDS among  
24 friends, relatives and co-workers of persons with AIDS suggesting  
no risk of infection of casual contact. (Exh. II.)

25 <sup>24/</sup> Although AIDS has a long incubation period,  
26 the anti-bodies of the AIDS virus develop within a week to a  
27 month. So the tests for anti-bodies is important in being able  
to determine if someone is going to develop AIDS. -(RT I 95,  
3-10.)

1 18-25, 1-11.) These studies<sup>25/</sup> are important because if a  
2 person does not catch AIDS from their infected family member with  
3 whom they share meals, drinking glasses, bathroom facilities,  
4 hugs, kisses, clothing and bed, then it can be assumed that AIDS  
5 will not be spread in the less intimate atmosphere of the  
6 workplace. (RT I 45-46, 48, 56, 14-25, 1-2, 1-14, 16-25, 1-14.)  
7

8 Dr. Schram stressed that the 1984, 1985 studies merely  
9 confirmed what had been reported in 1983 regarding the  
10 transmission of AIDS. (RT I 50, 15-22.)

11 Dr. Schram also stated that he examines persons with  
12 AIDS and that where he is not going to come into direct contact  
13 with his blood or blood secretions he does not wear gloves, masks  
14 or gowns. This policy applies to nurses in his office as well.  
15 His AIDS patients wait in the waiting room and when they are  
16 hospitalized they are not kept in isolation except for blood and  
17 body fluid precautions. He testified he would not put himself,  
18 his staff and his other non-AIDS patients at risk if there was  
19 any real chance that AIDS was spread casually. (RT I 63-64,  
20 10-25, 1-6.)

21 Regarding whether or not people with AIDS should stop  
22 working, Dr. Scharm stated:

23 A. I have never recommended that  
24 they discontinue employment. I  
25 certainly have recommended that they

26 <sup>25/</sup> These studies exclude sexual partners and  
27 children born to persons with AIDS.



1 go on periods of disability.

2 But I feel strongly that people  
3 with AIDS should return to work  
4 when they are able to. I think  
5 that is an extremely important  
6 part of their overall well-being.

7 Q. And why do you say that?

8 A. I think survival. We are  
9 dealing with a disease where we  
10 are telling people they are  
11 going to die. People with AIDS  
12 read in the media every day that  
13 AIDS is a hundred percent fatal.  
14 That's a terrible thing to tell  
15 people. Some people have lived  
16 four, five, six years with AIDS.  
17 There's no reason that they should  
18 not work.

19  
20 Emotionally, it is of extreme  
21 importance for them to work.

22 Many people have been deserted  
23 by their family, friends and loved  
24 ones. To have them also not be  
25 allowed to return to work is just  
26 devastating.

27 Dr. Schram stated there has not been one documented

1 case of someone acquiring AIDS by being in the same room with,  
2 working with, shaking hands with, riding a bus with, touching the  
3 same door handle as, sharing meals, cups, bathroom facilities,  
4 swimming pool, hot tub or by eating food prepared by someone who  
5 has AIDS. (RT I 76-77, 1-25.)

6 The fact that the AIDS virus has been found in tears  
7 and saliva does not indicate that AIDS is transmitted casually.  
8 (RT I 99-100, 105, 14-25, 1-13, 10-12.) The amount of the virus  
9 found in saliva is very small. Even assuming the virus is alive  
10 in the saliva outside the body for a short period of time that  
11 saliva would have to come in contact with an open wound to get  
12 into a body's white blood cell in order to represent a potential  
13 problem. (RT I 108-109, 116, 9-25, 1-11, 2-19.) Once again the  
14 family and health care studies would have pointed out such a risk  
15 of infection, if, indeed there is a risk. The studies do not  
16 indicate AIDS is transmitted via saliva. For example,  
17 Hepatitis-A is spread by saliva. Family members living with  
18 persons with hepatitis-A do catch hepatitis-A. (RT I 113-114,  
19 20-25, 1-7.)

20  
21 2. Stephen Wayne Hosea, M.D.

22 Dr. Hosea specializes in infectious disease.<sup>26/</sup>

23  
24  
25 <sup>26/</sup> Infectious disease study is the spread,  
26 diagnosis and therapy of various kinds of infection. (RT I  
27 126-127, 25, 1.)

1 He graduated from Harvard College and Harvard Medical School. He  
2 served as a fellow doctor at the National Institute of Health.  
3 He is certified by the Board of Infectious Disease and a member  
4 of the Infectious Disease Society. He is an Associate Clinical  
5 Professor at the University of Southern California at Cottage  
6 Hospital in Santa Barbara. (RT I 125-128, 22-25, 1-25, 1-21, Ex.  
7 4.)

8 Dr. Hosea has treated most of AIDS cases in Santa  
9 Barbara County. Dr. Hosea testified that AIDS is transmitted by  
10 sexual contact or blood or blood-by products. (RT I 135, 10-19.)  
11 Dr. Hosea based his opinion on the transmission of AIDS on his  
12 medical background, experience and relevant scientific  
13 literature. (RT I 136, 18-23.)

14  
15 3. Martin Finn, M.D.

16 Dr. Finn is the Medical Director of Public Health for  
17 the County of Los Angeles. He is board certified in preventive  
18 medicine since 1971. He has been an Assistant Clinical Professor  
19 of Medicine at the University of Southern California, School of  
20 Medicine, Department of Community Medicine since 1973.  
21 (Exh. 7.)

22 Dr. Finn has been involved with AIDS since 1981, as the  
23 first cases were reported by Dr. Michael Gotlieb. He is a member  
24 of the State AIDS Task Force. He is a board member of the AIDS  
25 Project. He is Chairman of the Board for the AIDS Project since  
26 1984. He is a member of the Los Angeles County Department of  
27 Health Services Task Force on AIDS, the Los Angeles City/County

1 Task Force on AIDS and the U.S. Conference of Mayors Task Force  
2 on AIDS. (Exh. 7 : RT I 178, 2-12.)

3 Dr. Finn has lectured on AIDS on several occasions  
4 throughout Los Angeles and San Diego County. He has attended  
5 many conferences regarding AIDS. As Medical Director of Public  
6 Health for the County of Los Angeles, Dr. Finn has directed  
7 medical research of AIDS. His office submits data regarding AIDS  
8 to the CDC. He is in frequent and direct contact with the CDC.  
9 (RT I 178-179, 13-25, 1-11.) - He has worked with many AIDS  
10 patients. Dr. Finn spends approximately 80 percent of his time  
11 on AIDS. (RT I, 180-181, 6-9, 14-19.)<sup>27/</sup>

12 Dr. Finn testified AIDS is transmitted through sexual  
13 activity and blood and blood by-products. AIDS is not, according  
14 to Dr. Finn spread casually, based on his experience, background  
15 and reaching of relevant literature. (RT I 179, 12-19.)

16 The County of Los Angeles Department of Health Services  
17 has a policy of allowing person with AIDS to return to work since  
18 1983. (RT I 186, 1-13.)

19 Dr. Finn stressed the importance of the family studies  
20 done by the CDC in demonstrating the manner by which AIDS can be  
21 transmitted. He said the studies found:

22 "There were five basic studies,  
23 which I believe the number was  
24 230 total. They reviewed the  
25 habits of individuals who were

26  
27 <sup>27/</sup> Los Angeles has the third largest group of  
persons with AIDS in the United States. (RT II 208, 22-24.)

1 family members of those with  
2 AIDS, including such things as  
3 the sharing toothbrushes, sharing  
4 of razors, feeding of the  
5 patients, caring of the patient,  
6 bating the patient and those  
7 things. Very, very close  
8 activities even in terms of the  
9 sharing of very intimate utensils,  
10 if you want to put it that way.  
11 And the reports were that none of  
12 the 230 had become positive for the  
13 HTLV-III antibody." (RT I 191, 8-19.)

14 Dr. Finn emphasizes the potential for transmission of  
15 AIDS is much greater in hospitals and by dentists as compared to  
16 most settings where casual contact occurs. (RT II 232, 8-17.)  
17 Thus, if health care workers and family members have not  
18 contacted AIDS via their close contact with persons with AIDS  
19 then it is clear AIDS is not spread in the settings of most work  
20 environments.

#### 21 4. Shirley Fannin, M.D.

22 Dr. Fannin is an Epidemiologist and Associate Deputy  
23 Director of Communicable Disease Control Programs for Public  
24 Health in Los Angeles County. She is a member of several  
25 professional societies including the American Public Health  
26 Association, Academy of Preventive Medicine and the Southern  
27 California Public health Association. She is affiliated with  
Cedars-Sinai Medical Center in Los Angeles. (RT II 244-245,  
21-25, 1-25 : Exh. 9.)

Dr. Fannin's background in AIDS is extensive. She  
described the first three cases of AIDS in Los Angeles in 1981.  
She is currently serving on the AIDS Task Force in Los Angeles.

(RT II 248-249, 18-25, 1-25 : Exh. 9.) She has been consulted on  
AIDS by the District Attorney's Office, City Attorney Office,  
Public School Systems, private companies and numerous other  
agencies. (RT II 251-252, 22-25, 1-14.) She was consulted by  
the City Attorney's office for the Los Angeles Anti-Aids  
Discrimination Ordinance. (RT II 276, 12-18.) Dr. Fannin's  
office submits data directly to the CDC on AIDS. She has  
lectured numerous times on AIDS, been published on the subject  
and attended many conferences and seminars regarding AIDS. (RT  
II 15-25, 1-13.) Dr. Fannin has interviewed approximately 50  
persons with AIDS. (RT II 259-260, 18-19, 2-3.)

Epidemiology is very important in the study of AIDS  
because as Dr. Fannin explained:

"Well, in the study of AIDS  
the epidemiology of AIDS is  
the most advance of any of the  
areas of inquiry. It was  
through those studies that we  
were able to determine that  
it was a transmissible agent  
before isolating that agent.

Because of the distribution of  
the disease, the characteristic  
distribution of the disease, we  
were also able to tell about  
its transmission because of  
the principles of epidemiology  
and because of the observations  
being made on an increasing  
number of cases.

We started out with our five  
cases. We added to that.  
Within four or five months,  
there were 70-some cases known  
from around the United States.  
It was observations on those  
cases that helped us determine,  
one, that it was not a chemical  
or a drug, and that it was



likely to be a transmissible agent." (RT II 250, 4-21.)

Based on her experience, background, reading of the relevant literature, Dr. Fannin testified that AIDS is transmitted by blood, blood by-products and sexual contact. AIDS is not transmitted by casual contact. She said she takes no precautions herself in face-to-face interviews of persons with AIDS. (RT II 260, 262, 4-8, 9-22.) She stated there has been no documented cases of someone acquiring AIDS by merely working with someone who has AIDS. (RT II 12-16.)

Dr. Fannin shared Dr. Schram's view that it is important for the well-being of persons with AIDS that they keep involved with day-to-day activity. (RT II 273, 9-24.)

Dr. Fannin stressed AIDS is similar to hepatitis-B in that its a blood-borne disease affecting the same high-risk groups. Hepatitis-B is more contagious than AIDS. (RT II 274, 5-9.) Hepatitis-B has been around longer and medical science has had much experience with it. Persons with hepatitis-B are all allowed to resume employment except in rare circumstances where there is a sharing of blood or blood by-products at their place of employment. (RT II 274-275, 1-25, 1-19.)<sup>28/</sup>

Dr. Fannin felt strongly about discrimination against persons with AIDS in the workplace. She recommended Los Angeles

<sup>28/</sup> Although hepatitis-B is less fatal than AIDS, many persons die of the secondary effects of hepatitis-B such as liver cancer. (RT II 286, 8-22.)

pass an Anti-AIDS Discrimination Ordinance:<sup>29/</sup>

"Well, basically, recommendations were that individuals has had a diagnosis of AIDS, because that was more frequently causing discrimination, should not be discriminated, institutionally discriminated against, because there was no supporting evidence for the irrational fears that were occurring. There was no supporting evidence for those fears.

And we were running into frequent problems with individuals, in both the person being discriminated against and the person doing the discriminating, who were calling our office, and the fear in the housing, for instance, was that somebody would catch it from the elevator button that an AIDS patient pushed as they went to their apartment, or that having the AIDS patient knock on their door or talk to them.

Way out of line.

With employment, we have run into, on several occasions, persons who has been dismissed, not on the basis of their inability to do the job they were doing, but sometimes even on the basis of gossip where the employer did not even have a verification that they had the disease, but on the basis of gossip. And they would just say, "I heard you have AIDS." Whisssshh, whisssshh, whisssshh, "Goodby."

That's where the ordinance really came about, is to say there is no reason to institutionally

<sup>29/</sup> Los Angeles passed such an ordinance in 1985.

1 discriminate against these people.  
2 Social discrimination we cannot  
3 stop.<sup>30/</sup> But we can stop  
4 institutional discrimination.  
(RT II 277-279, 23-25, 1-25, 1-3.)

5 Dr. Fannin pointed out that the health care and family  
6 studies indicate AIDS cannot be transmitted by casual contact.  
(RT II 280-285, 3-25, 1-25, 1-6.)

7 Dr. Fannin stated that AIDS virus is fragile.<sup>31/</sup>  
8 It does not survive or reproduce outside the body. Household  
9 cleaning detergents would kill it. (RT II 297, 303-303, 7-14,  
10 20-25, 1-24.) This evidence adds to the growing body of  
11 knowledge finding AIDS is not spread by casual contact.

12 Dr. Fannin was given the following hypothetical:

13 "Doctor, I'm now going to ask you  
14 another question and to assume facts  
15 that are true. I will then ask your  
16 opinion based on these facts.  
17 Assume that a young man has been  
18 working for a large defense firm  
19 since 1980. In 1983, he's diagnosed  
20 as having AIDS. He's a quality  
21 control analyst and has little  
22 or no contact with the public.  
23 He has casual contact with his  
24 co-workers. Do these co-workers  
25 run a risk of catching AIDS?"  
(RT II 333-334, 16-25, 1-2.)

26 <sup>30/</sup> Dr. Fannin didn't feel anyone could control  
27 individual discrimination against persons with AIDS such as not  
wanting someone with AIDS to come over to your home to have  
dinner. (RT II 279, 9-19.)

<sup>31/</sup> As opposed to a hardy virus like the smallpox  
virus which can survive outside the body for 6 months and is  
resistant to ordinary antiseptics. (RT II 339-340, 11-25, 1-6.)

1 She replied:

2 "I say "no" because, from my  
3 understanding of what a person  
4 in that job does, and the type  
5 of contact that they would have  
6 with other employees, the two  
7 requirements for transmission -  
8 which we believe are requirements  
9 for transmission - would not be  
10 met.

11 One is close, intimate sexual  
12 contact, like sexual contact and  
13 exchange of blood or blood  
14 products." (RT II 334, 8-16.)

15 5. Charles W. Juels, M.D.

16 Dr. Juels is an epidemiologist. He has a masters  
17 degree in public health from the University of California at  
18 Berkeley. He worked for 2 years as an epidemiologist for the  
19 Infectious Disease section at the California State Health  
20 Department, which is equivalent to the CDC at the state level.  
21 He also served as an epidemiologist for the United States Navy.  
22 He was the Director of Public Health Department for Weld County,  
23 Colorado, and Director of Communicable Disease Control at Santa  
24 Barbara County Health Care Services. He was an epidemiologist  
25 with the World Health Organization Smallpox Eradication Program  
26 in India. He is board certified by the American Board of  
27 Preventive Medicine. (RT III 403-405, 24-25, 1-25 : Exh. 10.)

Dr. Juels served on the Santa Barbara AIDS Task Force  
and has followed the epidemic of AIDS since its inception. He  
was responsible for publishing information regarding AIDS for  
Santa Barbara County. He answered numerous inquiries about AIDS

1 in his capacity of Director of Communicable Disease Control in  
2 Santa Barbara. He ran the Venereal Disease Control Program in  
3 Santa Barbara County. He screened many gay men for infection of  
4 the HTLV-III virus and referred them to other doctors. (RT III  
5 408-409, 19-25, 1-19.)

6 Like Dr. Fannin, Dr. Juels stated AIDS was very similar  
7 to hepatitis-B, except that hepatitis-B was more infectious, and  
8 persons with hepatitis-B are allowed to continue their  
9 employment. It follows that persons with AIDS who are less  
10 infectious should be allowed to continue their employment. He  
11 found that the CDC, as early as 1982, was making comparisons  
12 between AIDS and Hepatitis-B. Thus, AIDS is not spread by casual  
13 contact. (RT III 41, 416-419, 1-25, 8-22, 19-25, 1-2 : Exh. 11.)

14 Dr. Juels stressed the importance of health care  
15 studies regarding the transmission of AIDS. Since there are no  
16 documented case of health care workers who care for with person  
17 with AIDS, then casual contact of the virus does not represent  
18 the mode of transmission. (RT III 420, 426, 15-25, 6-18 : Exh.  
19 12; Exh. 13; Exhs. XIII-XIV.)

20 According to Dr. Juels, AIDS is not spread by casual  
21 contact. His opinion is based on his background, experience and  
22 relevant literature. (Exhs. 14-15; Exhs. 17-18 : RT III 440-441,  
23 444, 4-25, 1, 8-23.)

24  
25 6. Peter R. Wolfe, M.D.

26 Dr. Wolfe is an Assistant Professor of Medicine at  
27 University of California School of Medicine. He specializes in

1 Internal Medicine and Infectious Disease. He is board certified  
2 by the American Board of Internal Medicine and the American Board  
3 of Infectious Disease (Exh. 23 : Stip. RT. VIII 1327, 3-12; RT  
4 VIII 1327-1330, 17-25, 1-25, 1-20). He has served as a  
5 consultant for the Respondent since May, 1985.

6 Dr. Wolfe has extensive background in AIDS. He teaches  
7 classes on AIDS. He does medical research on AIDS and he has  
8 treated 600 persons with AIDS or AIDS related conditions. (RT  
9 VIII 1330, 1332-1333, 1345, 13-18.) He is associated with the  
10 AIDS Project Los Angeles. He works with Dr. Gotlieb who  
11 diagnosed the first cases of AIDS in the United States.  
12 University of California Los Angeles is at the forefront in AIDS  
13 research (RT VIII 1385-1386, 16-25)

14 Based on Dr. Wolfe's research, the body of knowledge  
15 regarding AIDS and his experience, he stated AIDS is not  
16 transmitted by casual contact (RT VIII 1337, 6-19). Dr. Wolfe  
17 does not recommend to his patients to stop working if they can  
18 physically continue working. Co-workers of persons with AIDS do  
19 not face infection from the virus merely because they work along  
20 side someone who has AIDS (RT VIII 1338-1341, 24-25, 1-18).

21 He agreed with other experts that AIDS is similar to  
22 hepatitis-B, but hepatitis-B is more infectious than AIDS (RT  
23 VIII 1342-1343, 17-25, 1).

24 Dr. Wolfe was given the following hypothetical, based  
25 on what his knowledge of AIDS was in 1984:

26 "Assume that a young man was  
27 working at a large defense  
since 1980. In 1983 he is  
diagnosed as having AIDS. He



1 is a quality control analyst in a  
2 firm since 1980. In 1983, he is  
3 diagnosed as having AIDS. He is a  
4 quality control analyst and has  
5 little or no contact with the public.  
6 He has only casual contact with  
7 his co-workers.

8 Do these co-workers run a risk of  
9 catching AIDS? (RT VIII 1384, 4-11.)

10 Dr. Wolfe's answer was not based on his experience, research,  
11 education and reading of the medical literature (RT III 1348-1349,  
12 11, 25, 1-16).

13 Dr. Wolfe testified there is no risk of the  
14 transmission of AIDS via tears and saliva of a person having AIDS  
15 (RT VIII 1350, 4-18). Dr. Wolfe stated he and others in the  
16 medical community are against quarantine of persons with AIDS:

17 A. Our medical advisory committee  
18 has talked about the issues of  
19 isolation and quarantine, and we  
20 do not feel that quarantines are  
21 indicated or effective in this disease.

22 Q. And why do you say that?

23 A. Historically, quarantines have  
24 only been effective when a  
25 disease has a very short incubation  
26 period and is highly contagious.  
27 This disease meets neither of those  
criteria. It takes a rather complex  
series of acts to get AIDS,  
volitional acts, compared with the

1 the classic communicable disease  
2 where, if a gentleman is coughing  
3 on the bus and he has tuberculosis,  
4 you can't just tell the germs,  
5 "Stop there and don't infect me."  
6 The Aids Project Los Angeles  
7 (APLA) tries to get the message  
8 out that people have control over  
9 whether they can get the disease  
10 or not. They don't need to feel  
11 so helpless.

12 Q. In terms of volitional acts,  
13 what are you referring to?

14 A. Mostly, sexual acts.

15 (RT VIII 1379, 4-23).

16 Finally Dr. Wolfe pointed out that Charbourne's  
17 condition represented no risk to prevent co-workers at Raytheon.  
18 (RT VIII 1388-1390, 3-25, 1-25, 1-22).

19 The record clearly demonstrates that AIDS is not  
20 transmitted by casual contact. Chadbourne represented no risk of  
21 infection to other workers at Raytheon.

22 IV

23 RAYTHEON DID NOT ACCOMMODATE  
24 CHADBOURNE.

25 The Act and the Commission's regulations require  
26 employers reasonably to accommodate the individuals who are  
27



1 physically handicapped within the meaning of the Act, so long as  
2 the accommodation does not impose undue hardship on the employer.  
3 (Gov. Code, § 12994; Cal. Admin. Code, tit. 2, § 7293.9.)  
4 Assuming Raytheon has proven Chadbourne's condition represents a  
5 "significantly greater" risk, then Respondent should not have  
6 failed to reinstate Chadbourne, but accommodated his physical  
7 handicap.

8 If AIDS is truly transmitted via casual contact,  
9 Raytheon could have accommodated their concerns. Raytheon failed  
10 to do so. In fact, Raytheon never ever considered accommodating  
11 Chadbourne during the relevant time period.

12 All witnesses who testified who had participated in the  
13 decision as to whether or not Chadbourne could return to work  
14 unanimously stated Raytheon never considered any type of  
15 accommodation of the Complainant's physical handicap.

16 Dr. Hosea and Dr. Juels testified Raytheon never spoke  
17 to them about accommodating Chadbourne. (RT I 139, 2-5; RT III  
18 458, 3-7.) Dr. Donald and Nurse Heybl stated they did not recall  
19 any management person at Raytheon discuss reinstating the  
20 Complainant and accommodating him in some manner. (RT V 815-816,  
21 958, 24-25, ii-11, 11-15.) Umanzio and Dr. Alphas admitted  
22 Raytheon never considered an accommodation of Chadbourne's  
23 physical handicap. (RT VI 1160-1161, 1-25, 1-16; RT VII  
24 1256-1257, 5-25, 1-14.) Finally, Chadbourne stated the company  
25 made no effort to accommodate him (Exh. 2). Raytheon could have  
26 easily accommodated Chadbourne. A view of the workplace  
27 confirmed the availability of accommodation of the Complainant's

1 condition. The offices are divided into cubicles where 2 or 3  
2 workers share space set from other clusters of offices by high  
3 movable walls. Raytheon could have partitioned the offices where  
4 the Complainant worked in such a way so as to not have him in  
5 close proximity with the 2 or 3 other co-workers who shared his  
6 office space.

7 The company could have allowed Chadbourne a private  
8 office with a door, such offices were unavailable. The plant has  
9 many isolated sections where 1 to 6 workers are working on  
10 classified parts. Some of these sections have combination locks  
11 to keep other employees out or signs which alert employees not to  
12 enter these sections or rooms. Chadbourne could have been placed  
13 to work in these sections.

14 If any company has isolated worksites it's Raytheon.  
15 Given the classified nature of the work, the company could have  
16 accommodated their concerns regarding the transmission of AIDS by  
17 having Chadbourne work in one of these isolated sections.

18 The company could have allowed Chadbourne to work at  
19 home on a computer terminal or transfer him to the night work  
20 shift. (Exh. 2 pp. 44-45.)

21 The company could have met with Chadbourne and medical  
22 expert and reached an agreement regarding his work activities.  
23 Chadbourne could have taken conservative, albeit unnecessary steps  
24 to alleviate fears such as using disposable cups as opposed  
25 to regular cups when drinking coffee at the common coffee maker,  
26 disinfecting the toilet and urinal, taking lunch outside the plant  
27 itself and using gloves when touching terminals and micro chips to

1 protect his hands from cuts when handling the machine parts he  
2 examined.

3 Raytheon envisions the worst possible scenario if  
4 Chadbourne would have returned to his position. Raytheon imagines  
5 Chadbourne would cut himself or have an attack requiring first aid  
6 assistance from another employee. This other employee, according  
7 to Raytheon's dark vision, would happen to have an open wound and  
8 Chadbourne's blood would happen to enter the blood stream  
9 attacking the employee's white blood cells, thereby infecting him  
10 with the HTLV-III virus. Raytheon then assumes this victim would  
11 then develop AIDS. This incredible set of possibilities is so  
12 remote. The trier of fact should not accept as probable  
13 Raytheon's speculation and unsubstantiated risk Chadbourne  
14 allegedly posed to other workers.

15 Had Raytheon listened to the advice of its own doctor,  
16 Santa Barbara County Health Department, the CDC and Chadbourne's  
17 doctor, all parties could have worked out a compromise allowing  
18 Chadbourne to return to work. Instead, Raytheon chose the most  
19 onerous alternative and did not reinstate Chadbourne. The company  
20 failed to accommodate the Complainant. Respondent failed to  
21 demonstrate an "undue hardship" if it would have accommodated  
22 him.

23  
24 V

25 COMPLAINANT IS ENTITLED TO BACKPAY,  
26 COMPENSATORY DAMAGES AND OTHER RELIEF

27 Upon a finding that illegal discrimination has occurred,

1 the Commission is required to order remedies sufficient to restore  
2 the victim to the position he would have been in, but for  
3 Respondent's unlawful conduct. (Gov. Code, § 12970, subd. (a).)  
4 Such remedies may include, but are not limited to, the award of  
5 back pay, lost benefits, and compensatory damages. Moreover, the  
6 chosen remedies must also serve to effectuate the purposes and  
7 policies of the Act. (DFEH v. Bee Hive Answering Service (1984)  
8 FEHC Dec. No. 84-16 [1984-85 CEB ], at p. 24; DFEH v. Louis  
9 Cairo, FEHC Dec. No. 84-04, at p. 16; DFEH v. Ambylou Enterprises  
10 (1984) FEHC Dec. No. 82-06, [1982-83 CEB 3], at p. 8.)

11  
12 1. Back Pay

13 The parties stipulated to the amount of Chadbourne's  
14 lost wages. (Stip. RT I 23-24, 24-25, 1-9.) In addition,  
15 Respondent should repay payments made to Chadbourne while he was  
16 on disability from January, 1984, until his death on January 6,  
17 1985. These payments were made to the Complainant from Social  
18 Security (SSI) and Metropolitan Life Insurance. SSI paid  
19 Chadbourne \$547.00 per month from July, 1984, until January, 1986.  
20 Metropolitan Life Insurance paid Chadbourne \$1,200.00 a month from  
21 January, 1984 until July, 1984. In July, 1984, Metropolitan Life  
22 Insurance deducted Chadbourne's SSI monthly payments.  
23 Metropolitan Life Insurance then began paying Chadbourne \$653.00 a  
24 month until January, 1986.

25  
26  
27 ///

1 2. Compensatory Damages for  
2 Emotional Distress

3 In order to make a victim of unlawful discrimination  
4 whole for the emotional injury he has suffered because of an  
5 employer's wrongful conduct, the Commission has authority to award  
6 compensatory damages. (DFEH v. Bee Hive Answering Service, supra,  
7 FEHC Dec. No. 84-16, at p. 25; DFEH v. Jack's Restaurant (1984)  
8 FEHC Dec. No. 84-08 [1984-85 CEB 5], at p. 12; DFEH v. Donald  
9 Schriver, Inc. (1984) FEHC. Dec. No. 84-07 [1984-85 CEB 4], at p.  
10 17; DFEH v. Shakey's Pizza Parlor (1984) FEHC Dec. No. 84-23  
11 [1984-85 CEB ], at pp. 33-36; DFEH v. Ambylou Enterprises, supra,  
12 FEHC Dec. No. 82-06, at pp. 9-12; cf. Hess v. FEHC (1982) 138 Cal.  
13 App. 3d 232, 237.)<sup>32/</sup>

14 The Department prays that Chadbourne's estate be awarded  
15 \$50,000.00 for the pain and suffering he endured due to  
16 Respondent's failure to reinstate him in January, 1984. The  
17 Department also prays that \$25,000.00 be donated to the University  
18 of California, Medical School in Chadbourne's name for AIDS  
19 research. Thus, Chadbourne's Estate should be awarded  
20 \$75,000.00.

21 The record clearly established that Raytheon's failure  
22 to reinstte Chadbourne had a devastating effect on Chadbourne.  
23

24  
25 <sup>32/</sup> Although Section 573 of the California Probate  
26 Code states a decedent can not recover damages for pain and  
27 suffering, a decedent can recover compensatory damages in a civil  
rights case. (Guyton v. Phillips (1981) 532 F.Supp. 1154.)

1 He was already dealing with the emotional crisis of having a fatal  
2 condition. Raytheon's discriminatory actions made worse, an  
3 already tragic situation.

4 Chadbourne testified that when he first learned Raytheon  
5 would not allow him to return to work, he panicked. (Exh. 2 pp.  
6 37-38.) He had feelings of rejection, that his life was somehow  
7 being taken away from him. Chadbourne stated he was a workaholic  
8 and his life revolved around work. (Exh. 2 p. 38.)

9 His lowest point was when Umanzio told him he could not  
10 return to work until there was a cure for AIDS. He lost sleep and  
11 worried about his lost income. (Exh. 2 p. 38.) He took  
12 tranquilizers and thought of suicide. (Exh. 2 pp. 38-40.)

13 Chadbourne began to feel inadequate and unable to control his life  
14 because he couldn't return to work. He sought professional help.  
15 He often cried after speaking with Umanzio. (Exh. 2 pp. 41-44.)

16 Dr. Hosea corroborated the stress Chadbourne underwent  
17 as a result of Raytheon's discriminatory action. He stated  
18 Chadbourne was often depressed and frustrated because the company  
19 did not allow him to return to work. (RT I 141-142, 10-25, 1.)

20 Elizabeth Wood, a volunteer at the AIDS Counseling  
21 Assistant Program in Santa Barbara, also attested to Chadbourne's  
22 depression due to Raytheon's action. She stated Chadbourne was  
23 very upset and talked about committing suicide because Raytheon did  
24 not let him return to his former job. (RT VII 1222-1224, 17-25,  
25 1-25, 1-13.)

26 Considering all the evidence, the circumstances, the  
27 shoddy manner in which Raytheon treated Chadbourne and the



1 particularly traumatic effect Raytheon's decision had a  
2 Chadbourne, \$50,000.00 is warranted to make him whole as possible  
3 for the emotional injury he suffered, plus 10% interest.

### 4 5 3. Posting Order

6 A-posting order is warranted here to effectuate the  
7 purposes of the Act, the Commission should order Respondent to  
8 post the attached Notice at all offices in California in places  
9 readily visible to all employees for 90 days from the effective  
10 date of this decision. (DFEH v. Jack's Restaurant, supra, FEHC  
11 Dec. No. 84-08 [CEB 1984-85 CEB 5] at p. 15, writ granted on  
12 other grounds, app. pending; DFEH v. Fresno Hilton Hotel (1984)  
13 FEHC Dec. No. 84-03 [1984-85 CEB 2, p. 41, writ granted on other  
14 grounds. See Attachment A.

### 15 16 4. Other Relief

17 Raytheon should conduct training seminar for all  
18 employees about AIDS and AIDS-related condition. The Commission  
19 should also order that Raytheon develop and disseminate a policy  
20 regarding AIDS and AIDS-related condition for the workplace.

21  
22 VI

### 23 PUBLIC POLICY AND AIDS DISCRIMINATION 24 IN EMPLOYMENT

25 The Department prays the Commission consider the  
26 ramifications of their decision in the instant case. If the  
27 Commission does not find that AIDS is a physical handicap within

1 the meaning of the Act, employers will be able to terminate  
2 employees who are afflicted with AIDS and/or AIDS-related  
3 conditions with impunity. Workers with AIDS will not tell their  
4 employers they have AIDS. They may not even go to the doctor to  
5 be diagnosed for fear of losing their jobs lest someone informs  
6 their employer. At a critical time in AIDS research every case of  
7 AIDS and AIDS-related condition must be diagnosed, studied and  
8 treated so that a vaccine can be developed. Fear of  
9 discrimination due to lack of legal protection will only add to  
10 the many problems and tragedies associated with AIDS. Fear,  
11 ignorance and hysteria from the public and to some extent from the  
12 media, should not be the standard by which this case is judged.

13 The discrimination of persons with AIDS and AIDS-related  
14 conditions is so widespread that major cities have passed  
15 ordinances to alleviate the dilemma because there is perception  
16 the government on the federal and state level has not act quickly  
17 to stop the tragic consequences of discrimination of this new  
18 minority group.

19 It must be remembered that Raytheon is not a ma and pa  
20 business. It is a huge company with offices throughout the world.  
21 They had at their disposal, had they chosen to utilize such  
22 resources, the most up-to-date information on AIDS and most  
23 qualified experts. Raytheon discriminated against Chadbourne  
24 because of his physical handicap. The company chose to ignore the  
25 relevant information and instead, decided upon the most onerous  
26 alternative.

27 ///

1 CONCLUSION

2 The Department prays the Commission will find the  
3 Raytheon has discriminated against Chadbourne due to his physical  
4 handicap and award him the relief the Department has sought.

5 DATED: April 4, 1986.

6 Respectfully submitted,

7 DEPARTMENT OF FAIR EMPLOYMENT

8 AND HOUSING

9 JOHN R. CASTELLO  
10 Chief Counsel

11 BRIAN HEMBACHER  
12 Directing Attorney

13  
14  
15 By: 

16 GLORIA BARRIOS  
17 Staff Attorney

18 Attorneys for the Department  
19  
20  
21  
22  
23  
24  
25  
26  
27

1 ATTACHMENT A

2 NOTICE TO ALL EMPLOYEES OF RAYTHEON COMPANY

3  
4 Posted by order of the Fair Employment and Housing  
5 Commission, an agency of the State of California.

6 After a full hearing, the California Fair Employment  
7 and Housing Commission has found the Raytheon Company is liable  
8 for discrimination on the basis of physical handicap of John  
9 Chadbourne, Quality Control Analyst, by several of its managerial  
10 employees, under the State Fair Employment and Housing Act.

11 As a result of this violation of the law, Raytheon  
12 Company has been ordered to post this NOTICE and to:

- 13 1. Cease and desist from discriminating  
14 against any employee who has AIDS or  
15 any AIDS-related condition or any  
16 employee on the basis of their  
17 physical handicap; and  
18  
19 2. Pay to Complainant John Chadbourne's  
20 Estate \$50,000 in compensatory  
21 damages for emotional injury he  
22 suffered from Raytheon Company's  
23 unlawful discrimination and full  
24 backpay due him.  
25  
26 3. Contribute to the University of  
27 California, School of Medicine  
in Los Angeles, \$25,000 in  
Chadbourne's name for AIDS  
research.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

FRANK UMANZIO  
DIVISION OF INDUSTRIAL  
RELATIONS MANAGER  
RAYTHEON COMPANY

THIS IS AN OFFICIAL NOTICE. IT SHALL REMAIN POSTED FOR NINETY  
DAYS ON EMPLOYEE BULLETIN BOARDS AND AT ALL LOCATIONS WHERE  
APPLICANTS OBTAIN AND FILE JOB APPLICATIONS. FURTHER, THIS  
NOTICE SHALL NOT BE ALTERED, REDUCED, OBSCURED, OR OTHERWISE  
TAMPERED WITH IN ANY MANNER WHICH WILL HINDER ITS VISIBILITY.



DECLARATION OF SERVICE BY MAIL

I, the undersigned, hereby declare:

I am over eighteen years of age and not a party to the within cause. My business address is 322 West First Street, Room 2126, Los Angeles, California 90012.

On April 4, 1986, I served a copy of the attached

DEPARTMENT'S POST-HEARING BRIEF

on each of the following, by placing the same in an envelope (or envelopes) addressed (respectively) as follows:

Steven C. Owyang  
Executive and Legal Affairs Secretary  
Fair Employment and Housing Commission  
1390 Market Street, Room 410  
San Francisco, California 94102

Alfred Phillips  
Raytheon Company  
141 Spring Street  
Lexington, Mass. 02173

Leonard Graff  
National Gay Rights Advocates  
Public Interest Law Firm  
540 Castro Street  
San Francisco, California 94114

Richard J. Lopez  
Administrative Law Judge  
Office of Administrative Hearings  
314 West First Street  
Los Angeles, California 90012

Each said envelope was then on said date sealed and deposited in the United States mail at Los Angeles, California, the county in which I am employed, with the CERTIFIED postage thereon fully prepaid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 4, 1986, at Los Angeles, California.

*Celia Acero*  
CELIA ACERO

...and exercised its option  
Russell's house. It paid an ad-  
\$20,000 to Russell before the  
drawing. Russell, at the time of  
the sale, was under age fifty-five and  
did not buy another principal  
residence within two years.

The IRS took gift issue in the  
month and ruled:  
"1. Russell's capital gain. He has a  
\$20,000 capital gain on the  
sale of his house to charity. Note IRS  
makes a point that Russell was under  
fifty-five and did not buy another  
principal residence within two years.  
More about this later.  
2. Russell has not made a deducti-  
Continued on page 2, column 1

**Tomorrow's Columns**  
The columns in this space  
tomorrow will be "Antitrust and  
Trade Practice" by Stephen M.  
Axinn and Neal R. Stoll, and  
"Poverty Law" by Martin A.  
Schwartz.

**Doctor Treating  
AIDS Gets Writ  
Against Eviction**

A State Supreme Court justice is-  
sued a preliminary injunction Friday  
barring a Greenwich Village  
cooperative from attempting to evict  
a doctor treating AIDS patients.  
Also denying the board's motion to  
dismiss, Justice Ira Gammerman  
directed that the physician, Dr.  
Joseph A. Bonaband, be permitted  
to continue his tenancy in the  
building at 49 West Twelfth Street un-  
til the court decides the lawsuit on  
the merits. A temporary restraining  
order was issued Oct. 7.  
The board of the cooperative is as-  
Continued on page 4, column 4

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Federal securities laws in their fil-  
ings with the Securities and Ex-  
change Commission.  
Law in focus  
The state takeover disclosure act  
requires the filing of a registration  
statement when a takeover bid is  
made. The term is defined to mean  
the "acquisition of or offer to ac-  
quire, pursuant to a tender offer,  
any equity security of a target com-  
pany."  
Condee's contention, as in  
Continued on page 2, column 1

**Liman, Morgenthau  
Among 6 Named  
To Sentence Panel**

Special to the Law Journal  
ALBANY — Governor Cuomo an-  
nounced over the weekend his six ap-  
pointees to the Sentencing Guidelines  
Committee which was established to  
recommend mandatory sentencing  
guidelines to the Governor and  
Legislature.  
Joseph W. Bellacosa, who is  
resigning next month as Clerk of the  
State Court of Appeals, will be  
chairman of the fourteen-member  
committee. Mr. Bellacosa, a  
graduate of St. John's University  
Law School and a former professor  
and assistant dean there, will  
become professor of law and director  
of the Governmental Law Center at  
Albany Law School.  
The Governor also named:  
• Arthur L. Liman, a partner in  
the New York City firm of Paul,  
Weiss, Rifkind, Wharton & Garri-  
son. Mr. Liman is former chairman  
of the Executive Advisory Commit-  
tee on the Administration of Justice  
and is president-elect of the Legal  
Aid Society of New York.  
• Austin Gerald Lopez, a  
Continued on page 2, column 4

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The "rating" of federal  
certain popular legal mag-  
was deplored by forty-four  
City lawyers, many of them  
in major firms, in a sta-  
released for publication to-  
The statement was distrib-  
Leon Silverman, a senior pa-  
Fried, Frank, Harris, Sh-  
Jarnbeon who said it was tri-  
by an article in a recent edi-  
a monthly publication, *Am  
Lawyer*.

Among Supporters  
Among the forty-four sub-  
to the statement were pres-  
former presidents of the New  
State Bar Association, The As-  
tion of the Bar of the City of  
York and the New York C-  
Lawyers' Association; three fo-  
presidents of the American Coll-  
Trial Lawyers, the present  
former U.S. Attorney for  
Southern District of New York  
four former Federal Judges in  
York who are now in private  
fices.

In the two-paragraph state-  
the lawyers stated they "partic-  
deplore the undeserved invic-  
directed by the magazine at J-  
Mary Johnson Lowe, of the *South*

**Judge Upholds  
In Environmental**

A State Supreme Court justice  
satisfied that a proposed expan-  
of the subway storage yard  
Jamaica will not have any "signi-  
cant effect on the environment," he  
rejected an effort by Queens re-  
sidents and officials to force the Tra-  
sit Authority to submit an en-  
vironmental impact statement.  
Justice Frank Vaccaro, in dis-  
missing an Article 78 petition, ruled that  
the Authority's submission of a  
"negative declaration" on any pos-  
sible adverse environmental effect  
was sufficient to meet the requirements  
of the State Environmental Conservation  
Review Act.

The decision is published on page  
14, column 1.  
Justice Vaccaro pointed out in his  
decision in *Matter of Moneys*  
(Simpson), filed last week in Kings  
County, Special Term, Part 1, that  
because of a "glaring omission" in  
the statute, the agency had the sole  
authority to determine whether an  
environmental impact statement had  
to be filed with the Department of  
Environmental Conservation. The  
statement, known as an EIS, would  
have to affirm there would be no  
adverse effect on the environment.  
However, "strange indeed" though  
it is, the court emphasized, the law  
exempts agencies such as the Transit  
Authority from the requirement of  
filing such statements before em-  
in daily professional dividends with a  
New York Law Journal subscription.  
Coupon, Page 4.



...no way to get the government back in, even if it just meant regulating fares. "The cost structure of the lines is so different, nobody could say where to put the floor."

What's more, Derchia says, "If there was re-regulation of fares, the cost to the traveling public would go through the roof."

The prime push for a stronger government hand, strangely, doesn't come from airline operators. It comes from labor and banks, two groups that made out very well when fares were set by fiat. Even airline managements that fought against de-regulation know there's no way to go back.

Still, the pressure is there - and it could grow.

Much thanks to the financial editor, John S. ...  
...to the financial editor, John S. ...  
...to the financial editor, John S. ...

## ment Rulings

## ned in South t in New York

onrad

enting opinion stated that "too short a period of time" passed since the misconduct and there was no proof submitted that the petitioner's smiling problem was overcome.

### State Trooper's Case

In *Matter of De Jesus*, No. 48328, a state trooper was involved in an automobile accident fifteen minutes after completing a tour of duty. He died for Workers' Compensation benefits, contending that the injury occurred within the course of employment. The Board agreed, and the employer appealed.

The Third Department, in a dissenting opinion by Justice A. Franklin Honey, rejected the Board's determination, holding that where the officer completed his tour of duty, changed into civilian dress and drove his own automobile, the accident occurred outside the scope of his employment.

To hold that the accident was directly related to employment use the trooper was subject to a "four-hour recall," the court ruled, "would require a state that State Police are entitled to make statutory protection ever and however injured."

refusing to make such a conclusion, the court decided there was no connection between the accident and the employment to invoke the benefits of Workers' Compensation Law.

The Third Department, in another decision involving Worker's Compensation, upheld the Board's determination that the claimant's death occurred "in the course of employment" at a facility for the mentally ill when he was stabbed by a patient three years after the patient threatened "to get me at court, in *Matter of Masek*.

...jury had affirmed the verdict and a trial judge's decision to vacate a recommendation by a medical malpractice panel of no liability.

During trial, it developed that the physician member of the panel had participated with Dr. Eisenberg in reviewing the case at a hospital review committee meeting two weeks after the birth. The birth took place at Community General Hospital in Syracuse. The plaintiff was represented at trial by Leonard L. Fins and Bradley A. Sacks and on appeal by Alfred S. Julien, all of Julien, Schlesinger & Fins, the defendant by Paul A. Brown of Martin, Gonolis & Brown of Syracuse.

## Jury Awards \$500,000 For Injury on City Bus

A jury awarded \$500,000 to a plaintiff who was injured on a city bus. The jury found that the bus was defective and that the driver was negligent. The plaintiff's lawyer, August J. SanFilippo, of the firm Fuchsborg & Fuchsborg, said the jury's verdict was a strong statement of support for standing bus and subway riders. "Normally, a bus is struck at an angle, but the one Mr. Dermatosian struck was hanging straight down," Mr. SanFilippo said.

After deliberating for four hours last Wednesday, the jury rejected the Transit Authority's defense, based on a notation in Mr. Dermatosian's hospital file, that he suffered the injury in a sidewalk fall.

## Women's Bar Evaluates Westchester Candidates

The Judicial Screening Committee of the Westchester Women's Bar Association has announced its following evaluations of judicial candidates for seats in three courts in next month's elections:

County Court — Francis A. Nicolai and Richard C. Ross, both qualified; John J. Barry, not approved for failure to appear before the committee.

Family Court — Cheryl J. Bradley, well qualified; Orasio R. Bellantoni, Margaret Millus Maroldy and Sandra M. Miller, qualified.

Surrogate's Court — Evans W. Brewster, well qualified.

The association stated it will announce its evaluations of State Supreme Court candidates at a later date.

## Stated Meeting Set By Queens Bar

A stated dinner meeting of the Queens County Bar Association will take place at 7:15 P.M. Monday, Oct. 24.

A feature of the meeting will be a panel discussion, "Update on the Courts," with the following administrative judges:

12-13 Wright  
12-14 Klein, A.  
12-15 Schwartz, S.  
12-16 Wright  
12-17 Wollin  
12-18 Klein, A.  
12-19 Schwartz, S.  
12-20 Wright  
12-21 Holiday  
12-22 Wollin  
12-23 Klein, A.  
12-24 Schwartz, S.  
12-25 Wright

## APPELLATE DIVISION First Department

The Justices of the Appellate Division of the Supreme Court, First Judicial Department, by virtue of the authority vested in them do hereby amend subdivision (b) of Section 803.3 of the rules of this Court [22 NYCRR Part 803] to read as follows, effective October 11, 1986:

Section 803.3(b) of the rules of this Court shall read as follows:

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• News and analysis of developments important

Continued from page 1, column 1  
**Eviction Stayed**  
cused of violating the State Human Rights Law for allegedly refusing to renew the doctor's lease because he treats victims of AIDS, or acquired immune deficiency syndrome. The lawsuit was filed jointly by the doctor, five of his patients and the New York State Attorney General's office.

Relying on a provision in the State Human Rights Law that prohibits discrimination on the basis of disability in the rental of public accommodations or commercial space, the plaintiffs are seeking an order requiring the cooperative to issue the doctor a renewal lease at a commercially reasonable rent as well as \$10,000 in compensatory damages for each of the doctor's injured patients.

Dr. Sonnabend has rented office space in the building since 1977, but the cooperative refused to issue him a renewal lease when his last lease expired in November, 1983. On Aug. 17 the board sent Dr. Sonnabend a thirty-day notice to terminate his tenancy.

The doctor and the five AIDS patients are represented by the Lambda Legal Defense and Education Fund with Teitelbaum & Miller listed as counsel. The cooperative is represented by Jarblum & Solomon. The Attorney General is represented by its Civil Rights Bureau.

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# AIDS Policy & Law

The Bi-Weekly Newsletter on Legislation, Regulation, and Litigation Concerning AIDS

Volume 1, Number 9

BURAFF PUBLICATIONS, INC.

May 21, 1986

## Employment

### STATE AGENCY SAYS RACINE POLICY VIOLATES ANTI-DISCRIMINATION LAWS

The Racine, Wis., school district violated state anti-discrimination laws by adopting a policy barring teachers with AIDS from working in a school setting, a state agency said April 30.

The decision by the Equal Rights Division of the Department of Industry, Labor and Human Relations, said "probable cause" exists to believe the district discriminated against the Racine Education Association, the teachers' union, "because of handicap and sexual orientation."

"In effect, the decision tells the Racine school board that the state of Wisconsin is of the opinion that their policy violates the law," said Johnny Kimble, investigations supervisor for the

### Equal Rights Division

Wisconsin is the second state to issue a ruling on AIDS-based employment discrimination. In December, the Florida Commission on Human Relations ruled AIDS a handicap under state law (*Shuttleworth v. Broward County*, No. 85-0624; APL, Jan. 29, p. 1).

Employment Relations Director Frank Johnson said the district has requested a hearing by the state Labor Industry Review Commission, which could overturn the division's finding.

"I frankly have not changed my opinion," District Superintendent Dr. Don P. Woods said "I'm reluctant to put any known cases of AIDS in contact with others." (Continued on p. 2)

## Discrimination

### POLICY ON AIDS-BASED COMPLAINTS OUTLINED BY HHS REGION IX OFFICE

SAN FRANCISCO — Guidelines for investigating complaints of AIDS-based discrimination were outlined May 2 by the Region IX Office for Civil Rights in the federal Department of Health and Human Services.

Virginia Apodaca, acting manager of the Region IX office, said she has begun a campaign to inform the community about her office's role in accepting discrimination complaints. Her predecessor, Hal M. Freeman, resigned in February, saying HHS would "dodge this issue as long as possible and try to avoid taking jurisdiction over any case involving AIDS" (APL, Feb. 26, p. 1).

The guidelines, with an "expedited procedure" for AIDS-related complaints, were outlined in a letter from

Apodaca to Leonard Graff, legal director of the National Gay Rights Advocates in San Francisco.

The Office for Civil Rights at HHS administers provisions of the Vocational Rehabilitation Act of 1973, which bans handicap discrimination by recipients of federal funds. At issue is whether AIDS is such a handicap.

Apodaca told APL the guidelines do not represent a change "I'm not going to tell you it is a complete turnaround." She did say, however, that the expedited policy is new. For charges of AIDS-based discrimination, she said, "we are required to give 24-hour notification." The office will also prepare a plan for processing the investigation within five days. (Continued on p. 2)

## In This Issue . . .

Wisconsin finds AIDS bias under state law . . . p. 1

HHS office outlines policy on complaints . . . p. 1

Maine bars insurers' queries on tests . . . p. 2

Colorado quarantine bill killed . . . p. 2

Minnesota sets voluntary tracing program . . . p. 3

Stanford adopts guidelines for employees . . . p. 3

Senators seek presidential commission . . . p. 3

Research opportunity seen in military testing . . . p. 4

California insurer named in bias suit . . . p. 4

New York commission cites covert testing . . . p. 5

Public workers said shielded from bias . . . p. 5

Hospitals urged to maintain standards . . . p. 6

Insurers discuss curbing health care costs . . . p. 6

Waxman scores 'medical McCarthyites' . . . p. 7

Tanzania reports AIDS cases nationwide . . . p. 7

Delaware challenges arbitration award . . . p. 8



**Racine, from p. 1**

"This is stubborn opposition" by the school district, Kimble said. "Their policy is grounded in pure fear and uninformed opinion. When you have that kind of fear, you have these kinds of rules."

Under Racine's policy, staff or students with AIDS or AIDS-related complex (ARC) "are excluded from regular school attendance or attendance at work."

In a suit filed Feb. 10, the teachers' union said the policy violates the state's ban on discrimination based on handicap and sexual orientation and fails to consider whether AIDS is communicable in a work setting (APL, March 12, p. 5).

The school district, on the other hand, said the policy was necessary to protect the health and safety of students and staff.

The state investigator said that while the district's goals were "understandable," medical knowledge indicates AIDS "is not spread by casual contact." Further, she said, given that 73 percent of those with AIDS are sexually active homosexual and bisexual men, the policy "has a disparate impact on that group of people because of their sexual orientation."

The state issued a policy statement in February determining AIDS and ARC "a legally protected handicap under the Wisconsin Fair Employment Law," the investigator noted. (*Racine Education Association v. Racine United School District*, ERD Case 50279, Wis. DILHR) □

**Discrimination, from p. 1**

Freeman told APL that despite what looks like expedited action at Region IX, he still expects AIDS-related complaints to languish in Washington, DC. "It's not an issue of taking complaints, it's what happens to them," he said. "My understanding is that there are current complaints that the regional office took in March, docketed and sent to headquarters, that are still waiting for action."

Patricia Mackey, special assistant to federal Office for Civil Rights Director Betty Lou Dotson, told APL that the Region IX effort did not stem from a national directive and does not represent a change. "There never has been any bar to accepting [AIDS-related] complaints."

HHS has asked the Justice Department for an opinion on how AIDS should be treated under federal handicap law. The oldest pending charge of discrimination will not be decided until the opinion is issued, Mackey said. The charge was filed in 1983 against a hospital in Charlotte, NC, by a nurse who died this year. □

**Insurance****MAINE LAW BARS INQUIRIES ON TESTS**

Insurers will be barred from asking applicants to reveal whether they have been tested for exposure to the HTLV-III virus, under a Maine law that becomes effective July 16.

The law (LD 2367, Chapter 711), signed by the governor April 16, also prohibits insurers from requiring applicants to reveal test results before approving an application. It does not bar insurers from requiring a new test of an applicant, however.

The ban on questions concerning prior testing expires Oct. 1, 1987.

"It doesn't say insurers can't ask a person to take a new test. That was a compromise," said Rep. Charlene Rydell, a sponsor of the measure. "It's somewhat of an opening, but not a clear opening."

"I'm happy we were able to get that strong a piece of legislation, but I still have some questions about how it will be interpreted and used," Rydell told APL. "We may need some further legislation."

Russel Iuculano, governmental affairs director for the American Council of Life Insurance, said his group is "not happy" with the law. "Our understanding is that you can't ask an applicant for prior test history — even those that measure the existence of the virus."

**Quarantine****LACK OF ACCORD KILLS COLORADO BILL**

DENVER — Legislation that would have permitted state health officials to quarantine persons with AIDS was killed by its sponsor May 16.

In its final version, the bill (HB 1290), offered by Rep. Dale Erikson (R), would have permitted health department officials to test for AIDS in certain cases and would have required clinics and physicians to report cases of AIDS or the infection which causes AIDS (APL, May 7, p. 1).

The House refused to accept amendments made to the bill when it was given final approval in the Senate on May 15. Unable to reach a compromise, the House and Senate both voted May

"We don't want the results of tests given by alternative testing sites or blood banks," he said, "but we would like information from an individual's treating physician."

Dale McCormick, president of the Maine Lesbian/Gay Political Alliance, also criticized the new law. The alliance "wanted a public policy stand that using this test as a condition for insurability was wrong," she said. "There was simply, absolutely, no support for a public policy view. The legislators were only concerned with the right of business to do business," she told APL.

When the legislation was reported out, the state insurance bureau was directed to keep statistics on how many people are asked to take a test and how many are rejected for coverage, McCormick said. "We at least got the promise of statistics to deal with it when it becomes a problem. And it will."

**DC Council Approves Bill**

Meanwhile, a bill that would bar insurers from using any tests to detect the probable causative agent of AIDS was unanimously approved on first reading May 13 by the District of Columbia City Council (APL, May 7, p. 3).

A final vote will be taken May 27.

16 to adhere to their positions. Erikson then pulled the bill from consideration.

A spokesman for the Colorado Department of Health, which supported the measure, said he was "disappointed" at its defeat. "We felt the confidentiality and due process provisions were better [than the current statute]," said Fred Wolf, director of the sexually transmitted disease program.

Julian Rush, executive director of the Colorado AIDS Project, told APL, "We were very fortunate" that the bill was killed, although its demise was "just a quirk. I don't have any reason to assume someone wouldn't want to introduce another bill next session." □

**Discrimination****OPINION EXPECTED SOON FROM JUSTICE DEPARTMENT**

A legal opinion on how AIDS should be treated under federal law banning handicap discrimination is expected to be released soon by the Justice Department.

The Department of Health and Human Services had asked Justice for an opinion on how to handle cases of AIDS-based discrimination under Sec. 504 of the 1973 Vocational Rehabilitation Act, which bans handicap bias by recipients of federal funds (APL, May 21, p. 2). Justice is responsible for co-

ordinating each federal agency's grants program to ensure compliance with Sec. 504.

Word of the contents of Justice's opinion was provided to the *New York Times*, which reported on June 8 that the department was prepared to hold that persons with AIDS should be covered under the law. According to the report, persons who test positive for HTLV-III antibodies also would be covered under the law, which bans discrimination against individuals per-

ceived to have a disability.

Justice Department officials refused to confirm details of the report and told APL no opinion would be released until late this week, at the earliest.

Several cases have been filed with HHS' Office for Civil Rights, which is responsible for enforcing Sec. 504 as it pertains to recipients of departmental funds. A spokesman for the office told APL no final action will be taken on any of the complaints until Justice's opinion is received. □

**Discrimination****AIDS TERMED HANDICAP UNDER MISSOURI LAW**

AIDS is a handicap under Missouri law, the state Commission on Human Rights said June 3.

Responding to an inquiry by the National Gay Rights Advocates, Alvin A. Plumer, executive director of the commission, said that AIDS complaints are accepted under any of the three state antidiscrimination laws that cover handicap in housing, public accommodations, and employment.

A new state civil rights law (SB 513), passed by both houses and awaiting the governor's signature, will consolidate provisions of the three antidiscrimination laws into one measure, Plumer said.

The only AIDS complaint filed to date involved employment, Plumer told APL. In that case, he said, the commission issued a confidential ruling which found probable cause to believe discrimination had occurred. The ruling came in July 1984, but the complainant died during conciliation proceedings.

The complainant, a health care worker, left no will, which raised the issue of whether an estate can receive monetary damages, according to Plumer. The case was closed with no further action, he added.

The commission's probable cause ruling was issued nearly one and one-half

years before the first published decision in which AIDS-based employment discrimination was found to violate state law (*Shuttleworth v. Broward County, Fla.*, Fla. Comm on Hum Rel, FCHR No. 85-0624). However, under Missouri law information on charges that have not gone to court is not released unless one of the parties makes it public, Plumer said.

Any future complaints would be handled on the assumption that AIDS is a handicap, Plumer said, although as for other complaints, the determination of whether discrimination occurred would depend on the facts of the case. □

**Testing****PROGRAM TO NOTIFY TRANSFUSION RECIPIENTS ANNOUNCED**

Physicians will notify some 2,500 persons within the next few months that they received blood from donors who later were found to be positive for HTLV-III antibodies, the American Red Cross announced June 6.

The contaminated blood came from persons who gave blood before March 1985, when the test to screen for HTLV-III antibodies was developed. The donors' seropositivity status was discovered when they attempted to donate blood again after the test was developed. Since mid-1985, donors whose blood tests positive have been notified of their status.

Under the new "Look-Back" program, the Red Cross, which collects half the nation's blood supply, will notify the recipients' physicians, who then will notify their patients.

"The American Red Cross obviously regrets any emotional stress this notification process may generate," the organization said. "We have voluntarily undertaken this initiative not to alarm the public, but in the best Red Cross tradition of responsible service to the nation."

Terry Gautier, a spokesman for the Red Cross, told APL, "I really feel we're doing the responsible thing... If

we can stop the spread of this disease to just one person, this program will have been a success."

The program was endorsed by the American Hospital Association, which represents most U.S. health care institutions.

Edward Burtz, association vice president, said hospitals "welcome the opportunity" to help trace any patients who may have received contaminated blood. Burtz said the association and its member hospitals "will work closely with the national blood organizations and with physicians to ensure that patient confidentiality is maintained." □

# ILL-FOUNDED NOTIONS

Job discrimination against cancer patients

by Peter Canellos

**T**he diagnosis has been confirmed, and it's the one you dreaded most. You have cancer. But there is hope, the doctor says. Surgery, followed by several monthly chemotherapy treatments, should beat back the malignancy. After that, it is likely you won't ever hear from the cancer again.

That prognosis, offered every year to hundreds of thousands of Americans, is medically sound. Many people with cancer require only an initial procedure, or series of procedures, to force their disease into a remission that is often permanent. Indeed, there are five million cancer patients in the United States today, two million of whom are more than five years past diagnosis. But though their illness may be gone for good, it's not necessarily true that these people aren't likely to suffer as a result of their cancer again. According to an American Cancer Society (ACS) study, a majority of cancer patients report that one of the most horrifying effects of their disease comes after their treatments, when they go back to work or set out to look for a job. Ironically, discrimination continues despite the increasing likelihood of surviving cancer. A recent National Cancer Institute study says that "better than 50 percent of all patients diagnosed with cancer are potentially curable."

But employers are reluctant to hire cancer patients for many reasons, some of which are simple misunderstandings. Commonly accepted myths, such as that cancer is contagious and that all cancer patients will die of their disease, are at the root of much of the prejudice against people with a cancer history. But employers also fear putting a cancer patient on the payroll for a more calculated, dollars-and-cents reason: in the event of a relapse, an employee with cancer could run up huge medical bills, and drive up the company's health-insurance premiums.

A typical case is that of Barbara Service, who last summer was denied a job with the New York Police Department because she was treated for Hodgkin's disease (a cancer of the lymphatic system) six years ago. She underwent four months of radiation therapy in 1978, and was told by her doctors that she was completely cured. She has not received any treatment since then, and has remained healthy. Service, now 24, became interested in joining the NYPD as

*Continued on page 4*

*Continued from page 1*  
a uniformed police officer a little over a year ago. In December of 1983, she took the written qualifying exam and passed the test with a score of better than 90 percent. Then, last June, she took the department's aptitude test. She passed that, too. In August, she was required to take a physical examination and present her medical history. The NYPD physician failed her on the basis of her cancer history. If she had passed the medical exam, she would have had to take just one last step — a psychological test — before being trained as a policewoman.

Following department grievance procedures, Service appealed the results of her medical test, this time providing the NYPD with X-rays, hospital records, and statements from her

physicians, all showing her to have been completely cured for six years. In October, she received the result of her appeal. The terse, unsigned letter read: "Ineligible because of past history of Hodgkin's disease."

"Even when I had cancer I wasn't sick," Service says. "People say, 'You had cancer,' and I say, 'I know I did but I wasn't sick.' . . . I had radiation treatments one summer and wasn't even sick then." But the cancer continues to haunt her. "What they [the NYPD] did wasn't fair," she says. "They aren't saying I'm ineligible because I have it now, it's because I had it then." Both Service and her mother have tried unsuccessfully to reach the NYPD personnel bureau many times since learning the result of her appeal. Service says she was given the name of a person to contact, but that that person hasn't been in the office

whenever she's called and hasn't responded to any of her messages.

Lieutenant Walter Doyle of the NYPD personnel bureau told the *Phoenix* that the department has a policy of not hiring people with a cancer history. "It's unfortunate, but we have to set some kind of rule somewhere and that's it," Doyle says, adding that the NYPD medical requirements have been challenged in court and have been upheld. "Our training is six months at the Police Academy, which is quite expensive," he says. "We don't want to spend so much money on someone we may not be able to use. As you know, with that type of disease, it's never completely cured. It may just be in remission. Suppose it flairs up again in five or six years?" (Cancer specialists maintain that cancer can be, and routinely is, completely cured.)

In some cases, Feldman found, employers fired cancer patients for no other reason than that other workers were "disturbed by" or were insensitive to the cancer patient. In Feldman's study, three out of the four blue-collar workers with head-and-neck cancer she observed were fired for just such reasons. All four were fully recovered, but treatment had left their voices hoarse. In three of the

# ILL-FOUNDED NOTIONS

by Peter Canellos

currently in the process of settling a case involving an officer in remission from Hodgkin's disease who has suffered a relapse. The officer was first diagnosed as having cancer after being hired; now she is being "surveyed out" of the department, and will be paid a pension for the rest of her life. Doyle says, "If that [a cancer relapse leading to permanent disability] happens often, it drains our pension fund — which is another reason we have to look at people very closely."

Service is just one of many people in various sectors of the economy to be closed out of jobs because of a cancer history. In separate studies of job discrimination as it relates to cancer patients in white-collar and blue-collar/service-sector jobs, ACC-sponsored researcher Frances Feldman, a social-work professor at the University of Southern California, monitored the experiences of 345 cancer patients who returned to work after treatment. The results of Feldman's study were published last year. She found that 43 percent of blue-collar and service-sector jobholders were

fired or denied promotions by their former employers, even though doctors stated that they were well enough to work. Feldman found that eight percent of white-collar employees were fired, and that another 19 percent were denied promotions or forced off the company health plan. Even higher percentages of workers in both categories faced attitudinal or behavioral abuse — such as the reluctance of other employees to sit next to the cancer patients.

One source of job discrimination against cancer patients is myth about the nature of cancer. Feldman found that a sizable number of employers and workers fear that cancer is contagious; that myth results in both firings and behavioral abuse, such as forcing "the cancer patient to drink out of paper cups instead of non-disposable mugs during coffee breaks. Then there is the so-called death-sentence myth. Many employers believe that the cancer-stricken worker will live only a few months, with frequent absences from the job, and will distract fellow workers into a *Brian's Song* type deathwatch.

In some cases, Feldman found, employers fired cancer patients for no other reason than that other workers were "disturbed by" or were insensitive to the cancer patient. In Feldman's study, three out of the four blue-collar workers with head-and-neck cancer she observed were fired for just such reasons. All four were fully recovered, but treatment had left their voices hoarse. In three of the

mocked and mimicked the cancer patient. Since all three cancer patients were in some sort of supervisory position, their bosses fired them on the grounds that they had lost their effectiveness with their subordinates. One of the fired patients later attempted suicide.

The fourth blue-collar worker with head-and-neck cancer was able to maintain his effectiveness and keep his job by anticipating the prejudice of his colleagues. Before attempting to bark out orders in a high-pitched voice, he told his workers he was in a "second adolescence" and made a point of joking about his voice along with them. Says Feldman, "His experience shows that people should be prepared for what they might find."

Myths and prejudices account for some of the job discrimination cancer patients face. But more tangible factors, such as pensions and group health-insurance premiums, also create problems for cancer patients who wish to return to work. The majority of today's group health plans have "experience-adjusted" premiums, which means premiums go up, sometimes dramatically, based on how much insurance the group uses. In her study, Feldman found that because of experience-adjusted premiums some employers expressed reluctance to hire cancer survivors, since a costly relapse would send premiums soaring. To combat this form of discrimination, some cancer patients try to conceal their condition, though most can't get away with it because many job-application forms, and all health-insurance forms, include a question on "serious illness."

Blue Cross & Blue Shield, the nonprofit insurance company that covers 60 percent of the Massachusetts population, bases its rates on "experience adjustment." Blue Cross & Blue Shield spokesman Paul DiNatale says denying a job to a cancer patient for fear he will drive up the premiums is "a form of discrimination that is truly abominable," though he defends the insurance industry's practice of basing yearly rates on the amount of illness among company employees in the previous year. "One of our thrusts is health education — teaching people to stay healthy," DiNatale says. "One group might have a good year, so they should share in the savings."

DiNatale says he knows of companies that refuse to hire smokers or obese people for fear of health problems in the future, but speculates that cancer patients are discriminated against most often. He attributes the shying out of cancer, as opposed to other diseases, to the death-

survivable. Dr. Paul Nay, chief medical director of Massachusetts Mutual in Springfield, says that his company's actuarial research has shown that there are great differences in survivability among various types of cancer; distinction employers don't usually make.

• • •  
Educating the public about the survivability of cancer and providing support for patients who are victims of discrimination are two of the central aims of Cancer Hopetuls United for Mutual Support (CHUMS). A national organization of cancer survivors and their relatives and friends, CHUMS sends speakers to various functions around the country to counteract what Sar. Splaver, the group's president,

calls "the very great bias against cancer patients." Splaver blames "insurance discrimination" for creating a situation in which employers have an economic excuse not to hire a cancer patient, and also notes that employers don't routinely discriminate against job applicants with a history of other diseases.

All of this is a result of the fact, Splaver contends, that society has singled out cancer as a uniquely fatal condition. The mass media frequently portrays cancer patients as wan and emaciated, bravely going to the death, she says, and movies and television programs seldom feature characters who are treated for cancer and survive. "Terms of Endearment was wonderful until the doctor look at Debra Winger and says, 'It is cancer,'" Splaver says. "I thought, 'Oh, my God, they're going to kill this character off.' When everyone else in the theater was crying over the death of this fictional character, I was crying for what it would do to so many people with cancer. It's the death-sentence myth all over again."

CHUMS is credited with lobbying New York Congressman Mario Biaggi to propose a bill that would outlaw any form of discrimination against cancer patients. Introduced into Congress last year, the Biaggi bill is scheduled for committee hearings early in the next session. At that time, the House Education and Labor Committee will try to ascertain the bill's impact on the insurance industry and to determine whether denying a life insurance policy to a cancer patient constitutes discrimination. In any case, the bill is not expected to affect the way health insurance premiums are set.

The fiction office of the



American Cancer Society is taking an active interest in promoting the Biaggi bill. According to ACS Boston spokesman Terry Freundlich, the Boston office has provided Biaggi with eight case histories of discrimination against cancer patients by Boston firms. State Representative Paul Kollias of Worcester is in the process of preparing a bill that would specifically ban discrimination against cancer patients in Massachusetts. Some lawyers believe cancer patients may be protected by the state's anti-discrimination laws for the handicapped, but to date, the laws have not been tested on this point; hence, the necessity of the Kollias bill. Says Kollias aide Mary Clark, "Other states have passed bills like this, and, in researching it, [Kollias] found that Massachusetts didn't have something that explicit." Clark says Kollias will submit the bill this legislative session.

In Jane Brody's 1977 book *You Can Fight Cancer and Win*, Dr. Robert J. McKenna, a California cancer surgeon active in fighting job discrimination against his patients, estimates that job bias against cancer patients costs the nation's economy \$500 million a year. Brody and McKenna claim that many companies refuse to hire a cancer patient until he is five years past diagnosis. "The five-year policy of many

companies is absurd," McKenna says. "What is a person supposed to do for those five years — watch television and go hungry? Industry loses a qualified employee, the government loses tax dollars, and another family is forced to go on welfare."

Brody notes that research does not support the belief that cancer patients are able to work only sporadically. In a study of employees for the pre-breakup AT&T System, cancer developed at a rate of 167 cases per 100,000 employees each year. Fifteen percent of the patients died, and four percent were put on

permanent disability, but 81 percent of the cancer patients returned to work after treatment, having missed on the average 80 days of work. Says Brody, "Company officials concluded that while disability from cancer can be prolonged, it is far less common a problem compared to other diseases. They added that they especially welcomed the return to work of a valued older employee who has recovered from cancer."

Personnel officers at eight of Boston's largest employers contacted by the *Phoenix*, including John Hancock Insurance, Bank of New England, Massachusetts General Hospital, and Digital Equipment Corporation, asserted that a cancer history has no impact on whether they would hire a person — even as it relates to

health benefits. Despite the employers' claims, social workers at Boston-area hospitals report that many patients say they feel they lose or are denied jobs because they have a cancer history. The social workers add that the patients are not prepared to confront their employers or go public with discrimination complaints. "When they do face discrimination, people are afraid to deal with it directly," says Naomi Sterns, director of social work at Boston's Dana-Farber Cancer Institute. "Their self-esteem and confidence is gone. They feel that their body has betrayed them and they just don't have the confidence or energy to go after an employer."

One Boston-area discrimination case in which the victim did step forward is that of North Shore firefighter Jeffrey Hardy. Hardy has been treated briefly for a mild form of Hodgkin's disease when he was a teenager. He later trained for six years to become a firefighter, and earned a high score on the state civil service exam. Still, Hardy was rejected for a firefighter's position in Ipswich in 1976. In explaining the decision, the Ipswich town manager told local newspapers that he feared Hardy's cancer would recur and leave the town responsible for long-term disability payments. Hardy tried to reapply for the job later that year, after getting four doctors to tell the town manager

that the cancer was fully arrested. But the original decision stood. Hardy related his dilemma to local newspapers, including the *Boston Globe*. Eventually, Hardy was hired as a firefighter at the General Electric plant in Lynn.

Unlike Hardy, many cancer patients applying for jobs are not required to reveal their medical history, creating a major "to tell or not to tell" dilemma for them. Phyllis R. Stein, director of career services at Radcliffe College, is working with three colleagues on a book designed to help cancer patients solve this type of question. Stein says the book, to be titled *Back to Work: Managing Your Career After Cancer*, will address such issues as whether to tell a prospective employer about a cancer history, how to cover up gaps in a resume, and how to contend with interview questions such as "Where do you see yourself in five years?"

Stein says that, in her experience as a career counselor, she has found that many cancer patients consider career advancement a psychological aid in fighting their disease. For this reason, she does not advise cancer patients who have worked all their lives to abandon their careers when they become ill. She says her book will not try to tell patients whether or not they should tell an employer about their disease — assuming, of course, they have a choice; rather, the book will discuss the pros and cons of disclosing the

information on the pro side, an understanding employer could be supportive, and the worker wouldn't have to cover up any absences necessary for treatment. On the "con" side, Stein says, is "employment discrimination and people's leprosy-like response to cancer patients."

Stein says she feels that if a cancer patient is working at or applying for a job in an organization in which another worker has been open about a cancer history and has been persecuted because of it, the worker or applicant would be justified in hiding his own cancer history. And because some firms are so inflexible about hiring people with a cancer history, Stein says former cancer patients should "get good legal advice" before making their condition known, even if the application form specifically asks for a medical history.

One person who failed to inform his employer of a cancer history related his story to Frances Feldman, shortly after she finished her landmark study on cancer discrimination. The ex-patient was an Air Force lieutenant who had had surgery for a brain tumor seven years before joining the service. When he first enlisted, he did not tell the doctor performing his physical of his cancer history, and he passed the physical. A few years later, he was up for a promotion and again had to take a physical. This time, the Air Force doctor noticed the scar on the lieutenant's head and asked him how he got it. The lieutenant told him. The Air Force immediately brought charges against him for the purpose of giving him a medical release. The lieutenant got doctors to testify that he was fully cured; the cancer had been last treated almost 10 years earlier. The hearing board found him medically fit for service. Having lost that battle, his superior officers tried him again — this time for not mentioning his cancer history at the time of his first physical. They succeeded, and he was discharged. The lieutenant wrote to Feldman, "They were so fearful of having someone with cancer that even though they couldn't get me out for a medical reason, they pressed on until they found a way."

James G. Ledbetter, Ph.D., Commissioner



Wayne Yancy  
(404) 656-3377  
878 PEACHTREE STREET, N.E. / ATLANTA, GEORGIA 30309

June 19, 1986

Mr. Benjamin Schatz, Esquire  
Director  
AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, California 94114

Dear Mr. Schatz:

This is with reference to your letter of May 30, 1986 concerning AIDS being considered a physical handicap under Georgia's anti-discrimination laws. Georgia is, of course, subject to federal laws relating to discrimination and the handicapped. It is my understanding that the United States Department of Justice has ruled that AIDS is considered a handicap under various federal anti-discrimination laws.

Georgia Code Section 34-6A-1 prohibits discrimination against the handicapped in employment. This law does, however, exempt persons with a communicable disease from its provisions. The law does not define "communicable disease" and the health code does not classify AIDS as a communicable disease. The law has not been tested and no judicial opinion has been issued relating its provisions to AIDS.

The Department of Human Resources advises employers to continue the employment of AIDS victims since the disease is not transmitted through casual contact.

You may wish to also contact the Office of Fair Employment Practice of the Georgia Department of Labor concerning their rules and regulations.

Although the content of this letter is not intended to be a legal opinion, I hope it will be of value to you.

Sincerely,

James W. Alley, M.D., M.P.H.  
Director  
Division of Public Health

JWA/dhj



# Minnesota Department of Human Rights

MINNESOTA

June 3, 1986

Ref June 6

Mr. Benjamin Schatz, Esquire  
Director, AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, California 94114

Dear Mr. Schatz:

The Minnesota Human Rights Commissioner requested that I reply to your letter dated May 30, 1986, regarding Acquired Immune Deficiency Syndrome (AIDS).

The Minnesota Human Rights Act, Minnesota Statute Chapter 363, prohibits discrimination against disabled persons in employment, housing, public accommodations and public services.

A disabled person is any person who (1) has a physical or mental impairment which substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

The Minnesota Department of Human Rights does not issue advisory opinions on what constitutes discrimination under state statute. A case-by-case determination would be made on whether a person with AIDS or AIDS-Related Complex would have statutory protection under the Minnesota Human Rights Act.

The Minnesota Department of Human Rights has currently issued a probable cause determination of discrimination in one AIDS case and is currently initiating the processing of a second AIDS complaint.

Thank you for bringing this matter to our attention and we trust that this information will be useful for your purposes.

Very truly yours,

*Walter C. Barwick*

Walter C. Barwick  
Deputy Commissioner

WCB/edm

AN EQUAL OPPORTUNITY EMPLOYER



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

COMMISSION FOR HUMAN RIGHTS  
10 Abbott Park Place  
Providence, R.I. 02903-3768  
(401) 277-2661

June 25, 1986

Benjamin Schatz, Esq.  
Director/AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, California 94114

Dear Mr. Schatz:

In response to your request for information concerning the Rhode Island Civil Rights Laws vis-a-vis AIDS, please note that on December 6, 1985, the Commissioners voted to communicate through its counsel to the Rhode Island Governor's Committee on the Handicapped that they consider AIDS a handicap within the provisions of Rhode Island General Law 28-5-7 (Fair Employment Practices Act).

Although it was not posed at the time, it would be a reasonable inference that the same interpretation would apply to Rhode Island General Laws 11-24-2 (Public Accommodations), 34-37-4 (Housing), and 34-37-4.1 (Credit).

The Commission has not yet received any complaints from persons with AIDS, nor from anyone who is perceived to have AIDS (perception of handicap being protected under our laws). We can only say, therefore, that the Commission would process an otherwise jurisdictionally-appropriate complaint from a person without being able to give you any decisional information.

You may wish to inquire further on the subject by contacting the following offices:

Hand June 30, 1986

RHODE ISLAND

Benjamin Schatz, Esq.  
Page Two  
June 25, 1986

Rhode Island Governor's Commission on the Handicapped  
275 Westminster Mall  
Providence, Rhode Island 02903

Rhode Island Project/AIDS  
c/o RI Department of Education  
22 Hayes Street  
Providence, Rhode Island 02908

We hope that this answers your questions.

Very truly yours,

RHODE ISLAND COMMISSION



Eugene L. Booth  
Executive Director

ELB:jlg

# STATE OF ALASKA

## HUMAN RIGHTS COMMISSION

BILL SHEFFIELD, GOVERNOR

✓ AGENCY HEADQUARTERS  
800 A STREET SUITE 202  
ANCHORAGE, ALASKA 99501 3628  
PHONE (907) 276 7474

NORTHERN REGION  
675 SEVENTH AVENUE, STE H  
FAIRBANKS, ALASKA 99701  
PHONE (907) 452 1561

SOUTHCENTRAL REGION  
800 A STREET SUITE 204  
ANCHORAGE, ALASKA 99501 3628  
PHONE (907) 274 4692

SOUTHEASTERN REGION  
PO BOX 44  
314 GOLDSTEIN BUILDING  
JUNEAU, ALASKA 99801  
PHONE (907) 465 3560

June 30, 1986

Benjamin Schatz  
Director, AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, CA 94114

Dear Mr. Schatz:

I have received your letter of May 30, 1986 discussing Acquired Immune Deficiency syndrome (AIDS) as a medical disability and your request for information from our agency that AIDS qualifies as a handicap under Alaska law.

The Alaska Commission has not ruled on this question. Our staff, however, have been instructed to accept complaints of discrimination in employment because of AIDS on the basis of physical handicap.

AS 18.80.300 defines physical handicap as "the existence or history of an anatomical, physiological, or neurological disability, infirmity, malformation, or disfigurement which is caused by injury, birth defect, or illness". In discussions with community organizations advocating the rights of gays and lesbians, I have indicated the staff's willingness to investigate complaints of AIDS related discrimination so that the jurisdictional question can be resolved with respect to the facts of an individual complaint.

It may interest you to learn that the International Association of Official Human Rights Agencies (IAOHRA) has scheduled a workshop on sexual preference an emerging human rights issue at its upcoming 38th annual conference to be held here in Anchorage July 6-10. The workshop is being conducted by Mary Fran Tryon, the Director of the Wisconsin Commission. As you know, Wisconsin is unique in its State Statute protecting the rights of gays and lesbians. You may wish to contact Ms. Tryon, who will be the moderator of that workshop, as an excellent source for information about the protections of State law. The State of Washington Human Rights Commission has also recently been very active in dealing with discrimination on the basis of age.

ALASKA



Benjamin Schatz  
June 30, 1986  
Page Two

I hope that this information is useful to you in your efforts to combat AIDS related discrimination.

Sincerely yours,

*Janet L. Bradley*  
Janet L. Bradley  
Executive Director

JLB/ljh

RICHARD F. CELESTE  
Governor



July 14, 1986

# OHIO CIVIL RIGHTS COMMISSION

CENTRAL OFFICE  
220 Parsons Avenue  
Columbus, Ohio 43266-0543  
1-614-466-2785

## REGIONAL OFFICES

NORTHEAST REGIONAL OFFICE  
Frank Lausche Building, Suite 885  
615 West Superior Avenue  
Cleveland, Ohio 44113  
1-216-622-3150

SOUTH E. REGIONAL OFFICE  
Akron Government Center - Suite 205  
161 South High Street  
Akron, Ohio 44308  
1-216-379-3100

NORTHWEST REGIONAL OFFICE  
One Government Center - Room 236  
Jackson and Erie Streets  
Toledo, Ohio 43604  
1-419-245-2900

SOUTHEAST REGIONAL OFFICE  
220 Parsons Avenue  
Columbus, Ohio 43266-0543  
1-614-466-5928

SOUTHWEST REGIONAL OFFICE  
200 Goodall Complex  
124 West 9th Street  
Cincinnati, Ohio 45202  
1-513-452-3344

NORTH S.W. REGIONAL OFFICE  
200 Miami Tower  
40 West 4th Street  
Dayton, Ohio 45402  
1-513-449-6500

July 14, 1986

Mr. Benjamin Schatz, Esquire  
Director, AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, California 94114

Dear Mr. Schatz:

I am referring your letter to Mrs. Helen Ninos, Assistant Attorney General, Chief, Civil Rights Section, 50 West Broad Street, Columbus, Ohio 43215, for a reply in regards to Ohio's position on declaring that AIDS qualifies as a handicap under our States' anti-discrimination laws. Also, you may reach Mrs. Ninos by telephoning AC 614-466-7900.

Please feel free to contact this office, if you have any further questions.

Sincerely,

*Robert D. Brown*  
ROBERT D. BROWN,  
EXECUTIVE DIRECTOR

Enclosure: OCRC literature

cc: Mrs. Helen Ninos,  
Asst. Attorney General,  
Chief, Civil Rights Section

RDB/ps

- We policy on AIDS to do  
- done by one basis -  
to determine if  
AIDS is a disability

129456

Rec'd  
June 11/86

From

INCLUDE  
MAIL  
STOPS

To

Message

Reply

Mary Berlin  
Unit Supervisor  
WA St. Human Rights Com.  
Spokane Office

Benjamin Schatz  
National Gay Rights Advocates  
San Francisco CA 94114



**ECON-O-GRAM**  
"To Provide Faster Service  
at Lower Cost"

Subject

FILE #

Your May 30 letter

☐ PLEASE  
REPLY BY

☐ NO REPLY  
REQUIRED

I apologize for replying so infor-  
mally, however I wanted to get some  
information to you as soon as possible.  
Enclosed find our AID's poster, an  
information pamphlet on our agency  
and a copy of our law.  
I am forwarding your letter to our  
agency Director in Olympia.

Mary Berlin 6-6-86

SIGNATURE

PHONE NO.

DATE

FORM SF-1

ORIGINATOR SEND WHITE AND YELLOW COPIES TO RECIPIENT

RECIPIENT RETURN YELLOW COPY IF A REPLY IS NECESSARY

## WASHINGTON STATE LAW PROHIBITS

### Discrimination Based on AIDS



- IN EMPLOYMENT
- IN PLACES OF PUBLIC ACCOMMODATIONS, RESORT OR AMUSEMENT
- IN ALL CREDIT AND INSURANCE TRANSACTIONS
- IN REAL ESTATE RENTAL, LEASE OR SALE

Acquired Immune Deficiency Syndrome (AIDS) is a medical condition considered a disability under the Washington State Law Against Discrimination, RCW 49.60. Complaints are accepted and processed from:

- Persons who have AIDS
- Persons perceived to have AIDS
- Persons perceived to be particularly susceptible because they are related to or reside with someone with AIDS
- Persons who have tested positive for HTLV 3 antibody.

### any person

believing that he or she has been discriminated against in any of the situations mentioned above should contact the WASHINGTON STATE HUMAN RIGHTS COMMISSION



402 Evergreen Plaza Building  
711 S. Capitol Way  
Olympia, Washington 98504-3341  
(206) 753-6770

Columbia Bldg. 4th Floor  
1516 Second Avenue  
Seattle, Washington 98101-1508  
(206) 464-6500 Voice/TTY

West 905 Riverside Ave.  
Suite 416  
Spokane, Washington 99201-1099  
(509) 456-4473 Voice/TTY

1714 S. 16th Ave.  
Yakima, Washington 98902-5713  
(509) 575-2772



#### Educational and Consulting Services

Business, community groups, and individual citizens should feel free to contact any office of the Washington State Human Rights Commission for information on their rights or how to comply with the Law Against Discrimination. Services are available in affirmative action program development, pre-employment screening, instructional materials and workshops, and many other areas of concern. The Commission welcomes formal and informal inquiries, whether by telephone or in writing. Do not hesitate to call on the Commission's staff for assistance.

#### Offices

105 Margaret Plaza Building  
1111 S. Capitol Way  
Olympia, Washington 98504-1111

(206) 763-6770

1601 Second Avenue Building  
Fourth Floor  
Seattle, Washington 98101-1504

(206) 464-6500  
Voice/TDD

1925 West Lexington  
Suite 8  
Tacoma, Washington 98401-1643

(509) 545-2379

1005 Riverside Avenue  
Suite 116A  
Spokane, Washington 99201-1099

(509) 466-4473  
Voice/TDD

1714 S. 16th Ave.  
Yakima, Washington 98902-9713

(509) 525-2772



## A STEP TOWARD EQUALITY

## WASHINGTON LAW AGAINST DISCRIMINATION

A state agency created with powers with respect to eliminating prevention of discrimination

(RCW 49.60.010)



WASHINGTON STATE HUMAN RIGHTS COMMISSION

Revised February 1985

#### The Law and Its Administration

Washington's Law Against Discrimination (RCW 49.60) guarantees the right to equal opportunity in employment, real estate transactions, credit, insurance, and places of public accommodation. Various forms of discrimination are prohibited by the Law, as explained in the chart below.

The Law Against Discrimination is administered and enforced by the Washington State Human Rights Commission. The Commission processes complaints, makes regulations, conducts studies, and provides educational and consulting services. The Commission is an agency of the State Government, operated by a five-member Commission (appointed by the Governor) and its staff. The Commission has offices throughout the State (see listings on back page) which are there to assist any person who wishes advice, information, or assistance.

#### Regulations

The Washington State Human Rights Commission has been given the authority to make legally enforceable regulations which carry out in more specific detail the provisions of the Law Against Discrimination. The Commission's regulations control such practices as: the questions that may be asked of an employment applicant; discriminatory advertising in housing and employment; and many others. Full compliance with the Law includes compliance with these regulations. Information on the regulations is available from any Commission office.

### DISCRIMINATION PROHIBITED BY THE WASHINGTON STATE LAW AGAINST DISCRIMINATION

Discrimination is prohibited if based upon:

race, color, creed, national origin, age (only those 40-70 are covered), sex, marital status, or the presence of a physical, sensory, or mental handicap or the use of a trained dog guide by a blind or deaf person.

sex, color, creed, national origin, sex, marital status, or the presence of any mental or physical handicap.

sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

race, creed, color, national origin, the presence of any sensory, mental, or physical handicap, or the use of a trained dog guide by a blind or deaf person.

### EQUAL OPPORTUNITY IS THE RIGHT OF EVERY INHABITANT OF THE STATE OF WASHINGTON

#### Discrimination: Complaints

Anyone who claims to be aggrieved by an act of discrimination may file a complaint with the Washington State Human Rights Commission within six months of the occurrence of the act.

Once received, a complaint is investigated by the Commission's staff to determine whether the evidence supports a conclusion that there is reasonable cause for believing that discrimination was practiced.

If a "reasonable cause" finding is made, the staff of the Commission will attempt to resolve the complaint with the party (the Respondent) that has been charged with discrimination. If efforts to reach a voluntary settlement fail, the matter is referred to the Commission's legal counsel for presentation before an administrative law judge.

If the administrative law judge finds that an unfair practice has occurred, the judge is empowered by law to order the Respondent to stop the unfair practice and to take action(s) that could be ordered by a court. Remedies include, but are not limited to, backpay; reinstatement; damages for humiliation and mental suffering, up to \$1,000.

Appeal procedures exist for both the complainant and the respondent, and the respondent should appeal with the first order of the administrative law judge.

#### Forms of Possible Remedies

For Discrimination Act:  
- hiring of respondent with or without back pay;  
- termination of special recruiting and employment practices to correct discrimination;  
- offer of reinstatement of insurance, refund of excess charges or fees; monetary damages; and adoption of special business procedures to correct discrimination.

Offer of reinstatement of credit and insurance; refund of excess charges or fees; monetary damages; and adoption of special business procedures to correct discrimination.

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WASHINGTON STATE

**LAW  
AGAINST  
DISCRIMINATION**

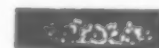


**CHAPTERS 49.60 & 49.74  
REVISED CODE OF WASHINGTON**

**WASHINGTON STATE  
HUMAN RIGHTS COMMISSION**

402 Evergreen Plaza Building  
OLYMPIA, WASHINGTON 98504

Telephone:  
753-8770



**TABLE OF CONTENTS**

**Chapter 49.60  
LAW AGAINST DISCRIMINATION**

Sections		
49.60.010	Purpose of chapter	3
49.60.020	Construction of chapter—Election of other remedies	4
49.60.030	Freedom from discrimination—Declaration of civil rights	4
49.60.040	Definitions	5
49.60.050	Commission created	8
49.60.051	Board name changed to Washington State Human Rights Commission	8
49.60.060	Membership of commission	8
49.60.070	Compensation and reimbursement for travel expenses of commission members	9
49.60.080	Official seal	9
49.60.090	Offices of commission	9
49.60.100	Reports of commission	10
49.60.110	Commission to formulate policies	10
49.60.120	Certain powers and duties of commission	10
49.60.130	May create advisory agencies and conciliation councils	11
49.60.140	Commission may hold hearings and subpoena witnesses	12
49.60.150	Witnesses compelled to testify	12
49.60.160	Refusals may be punished as contempt of court	13
49.60.170	Witness fees—Deposition fees	13
49.60.175	Unfair practices of financial institutions	14
49.60.176	Unfair practices with respect to credit transactions	14
49.60.178	Unfair practices with respect to insurance transactions	14
49.60.180	Unfair practices of employer defined	15
49.60.190	Unfair practices of labor unions defined	16
49.60.200	Unfair practices of employment agencies	17
49.60.205	Age discrimination—Limitation	17
49.60.210	Unfair to discriminate against person opposing unfair practice	17
49.60.215	Unfair practices of places of public resort, accommodation, assemblage, amusement	18
49.60.220	Unfair practice to aid violation	18
49.60.222	Unfair practices with respect to real estate transactions, facilities, or services	18
49.60.223	Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, handicap, etc.	20
49.60.224	Provisions of real property contract restricting conveyance, encumbrance, occupancy, or use to persons of particular race, handicap, etc., void—Unfair practice	20

49.60.225	Award to complainant for loss of rights secured	21
49.60.226	Cooperative agreements between units of government for processing complaints	21
49.60.230	Complaint may be filed with commission	21
49.60.240	Complaint investigated—Conference, conciliation—Agreement, findings	22
49.60.250	Hearing of complaint by administrative law judge—Order	23
49.60.260	Court may enforce orders of administrative law judge—Appeal from court order	25
49.60.270	Appeal from orders of administrative law judge	26
49.60.280	Court shall expeditiously hear and determine	26
49.60.310	Misdemeanor to interfere with or resist commission	27
49.60.320	Governor may act on orders against state or political subdivisions	27
49.60.330	First class cities of over one hundred twenty-five thousand population—Administrative remedies authorized	27

#### Chapter 49.74 AFFIRMATIVE ACTION

Sections		
49.74.005	Legislative findings—Purpose	28
49.74.010	Commission	28
49.74.020	Affirmative action rules—Noncompliance—Notification—Hearing	28
49.74.030	Noncompliance—Conciliation—Order	29
49.74.040	Failure to reach conciliation agreement—Administrative hearing—Appeal	29
49.74.050	Superior court—Remedies	29

#### RELATED STATUTE

RCW	
49.44.090	Unfair practices in employment because of age of employee or applicant—Exceptions
	30

RCW	
70.124.060	Liability of persons making reports
	31

#### WASHINGTON CONSTITUTION

Article IX	Education	
Section 1	Preamble	31
Article XXXI	Sex Equality—Rights and responsibilities	32

#### CHAPTER 49.60 LAW AGAINST DISCRIMINATION

**49.60.010 Purpose of chapter.** This chapter shall be known as the "law against discrimination". It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap; and the commission established hereunder is hereby given general jurisdiction and power for such purposes. [1985 c 185 § 1; 1973 1st ex.s. c 214 § 1; 1973 c 141 § 1; 1969 ex.s. c 167 § 1; 1957 c 37 § 1; 1949 c 183 § 1; Rem. Supp. 1949 § 7614-20.]

**Severability—1969 ex.s. c 167:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 167 § 10.]

**Severability—1957 c 37:** "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 § 27.] This applies to RCW 49.60.010 through 49.60.050, 49.60.090, 49.60.120 and 49.60.180 through 49.60.310.

**Severability—1949 c 183:** "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 § 13.] This applies to RCW 49.60.060 through 49.60.080, 49.60.100, 49.60.110, 49.60.130 through 49.60.170 and 49.60.320.

Urban renewal law—Discrimination prohibited: RCW 35.81.170.

**49.60.020 Construction of chapter—Election of other remedies.** The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical handicap, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his civil rights. [1973 1st ex.s. c 214 § 2; 1973 c 141 § 2; 1957 c 37 § 2; 1949 c 183 § 12; Rem. Supp. 1949 § 7614-30.]

**49.60.030 Freedom from discrimination—Declaration of civil rights.** (1) The right to be free from discrimination because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: *Provided*, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; and

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this

section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, national origin or lawful business relationship: *Provided however*, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices.

(2) Any person deeming himself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover the actual damages sustained by him, or both, together with the cost of suit including a reasonable attorney's fees or any other remedy authorized by this chapter or the United States Civil Rights Act of 1964; and

(3) Notwithstanding any other provisions of this chapter, any act prohibited by this chapter related to sex discrimination or discriminatory boycotts or blacklists which is committed in the course of trade or commerce in the state of Washington as defined in the Consumer Protection Act, chapter 19.86 RCW, shall be deemed an unfair practice within the meaning of RCW 19.86.020 and 19.86.030 and subject to all the provisions of chapter 19.86 RCW as now or hereafter amended. [1984 c 32 § 2; 1979 c 127 § 2; 1977 ex.s. c 192 § 1; 1974 ex.s. c 32 § 1; 1973 1st ex.s. c 214 § 3; 1973 c 141 § 3; 1969 ex.s. c 167 § 2; 1957 c 37 § 3; 1949 c 183 § 2; Rem. Supp. 1949 § 7614-21.]

**Severability—1969 ex.s. c 167:** See note following RCW 49.60.010.

**Severability—1957 c 37:** See note following RCW 49.60.010.

**Severability—1949 c 183:** See note following RCW 49.60.010.

**49.60.040 Definitions.** As used in this chapter "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any



owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof;

"Commission" means the Washington state human rights commission;

"Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit;

"Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person;

"Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment;

"Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer;

"National origin" includes "ancestry";

"Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or indirectly causing persons of any particular race, creed, color, sex, or with any sensory, mental, or physical handicap, or a blind or deaf person using a trained dog guide, to be treated as not welcome, accepted, desired, or solicited;

"Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services,

or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: *Provided*, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution;

"Real property" includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein;

"Real estate transaction" includes the sale, exchange, purchase, rental, or lease of real property;

"Sex" means gender.

"Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

[1985 c 203 § 2; 1985 c 185 § 2; 1979 c 127 § 3; 1973 c 141 § 4; 1969 ex.s. c 167 § 3; 1961 c 103 § 1; 1957 c 37 § 4; 1949 c 183 § 3; Rem. Supp. 1949 § 7614-22.]

**Reviser's note:** This section was amended by 1985 c 185 § 2 and by 1985 c 203 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1969 ex.s. c 167:** See note following RCW 49.60.010.

**Construction—1961 c 103:** "Nothing herein shall be construed to render any person or corporation liable for breach of preexisting contracts by reason of compliance by such person or corporation with this act." [1961 c 103 § 4.] This applies to the 1961 amendments to RCW 49.60.040, 68.20.110 and 84.36.020.

**Severability—1957 c 37:** See note following RCW 49.60.010.

**Severability—1949 c 183:** See note following RCW 49.60.010.

**49.60.050 Commission created.** There is created the "Washington state human rights commission," which shall be composed of five members to be appointed by the governor with the advice and consent of the senate, one of whom shall be designated as chairperson by the governor. [1985 c 185 § 3; 1981 c 338 § 9; 1957 c 37 § 5; 1955 c 270 § 2. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

**Reviser's note—Sunset Act application:** The human rights commission is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.327. RCW 49.60.050 through 49.60.170 and 49.60.226 through 49.60.320 are scheduled for future repeal under RCW 43.131.328.

**49.60.051 Board name changed to Washington State Human Rights Commission.** From and after August 9, 1971 the "Washington State Board Against Discrimination" shall be known and designated as the "Washington State Human Rights Commission". [1971 ex.s. c 52 § 2.]

**Sunset Act application:** See note following RCW 49.60.050.

**49.60.060 Membership of commission.** One of the original members of the commission shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill

a vacancy shall be appointed only for the unexpired term of the member whom the individual succeeds.

A member shall be eligible for reappointment.

A vacancy in the commission shall be filled within thirty days, the remaining members to exercise all powers of the commission.

Any member of the commission may be removed by the governor for inefficiency, neglect of duty, misconduct or malfeasance in office, after being given a written statement of the charges and an opportunity to be heard thereon. [1985 c 185 § 4; 1955 c 270 § 3. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

**Sunset Act application:** See note following RCW 49.60.050.

**49.60.070 Compensation and reimbursement for travel expenses of commission members.** Each member of the commission shall be compensated in accordance with RCW 43.03.250 and, while in session or on official business, shall receive reimbursement for travel expenses incurred during such time in accordance with RCW 43.03.050 and 43.03.060. [1985 c 185 § 5; 1984 c 287 § 98; 1975-'76 2nd ex.s. c 34 § 145; 1955 c 270 § 4. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

**Sunset Act application:** See note following RCW 49.60.050.

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**49.60.080 Official seal.** The commission shall adopt an official seal, which shall be judicially noticed. [1985 c 185 § 6; 1955 c 270 § 5. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Sunset Act application:** See note following RCW 49.60.050.

**49.60.090 Offices of commission.** The principal office of the commission shall be in the city of Olympia, but it may meet and exercise any or all of its powers at any other place in the state, and may establish such district offices as it deems necessary. [1985 c 185 § 7; 1957 c 37 § 6; 1955 c 270 § 6. Prior: (i) 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part. (ii) 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Sunset Act application:** See note following RCW 49.60.050.



**49.60.100 Reports of commission.** The commission, at the close of each fiscal year, shall report to the governor, describing the investigations, proceedings, and hearings it has conducted and their outcome, the decisions it has rendered, the recommendations it has issued, and the other work performed by it, and shall make such recommendations for further legislation as may appear desirable. The commission may present its reports to the legislature; the commission's reports shall be made available upon request. [1985 c 185 § 8; 1977 c 75 § 74; 1955 c 270 § 7. Prior: 1949 c 183 § 4, part; Rem. Supp. 1949 § 7614-23, part.]

**Sunset Act application:** See note following RCW 49.60.050.

**49.60.110 Commission to formulate policies.** The commission shall formulate policies to effectuate the purposes of this chapter and may make recommendations to agencies and officers of the state or local subdivisions of government in aid of such policies and purposes. [1985 c 185 § 9; 1949 c 183 § 5; Rem. Supp. 1949 § 7614-24.]

**Sunset Act application:** See note following RCW 49.60.050.

**49.60.120 Certain powers and duties of commission.** The commission shall have the functions, powers and duties:

(1) To appoint an executive secretary and chief examiner, and such investigators, examiners, clerks, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(2) To obtain upon request and utilize the services of all governmental departments and agencies.

(3) To adopt, promulgate, amend, and rescind suitable rules and regulations to carry out the provisions of this chapter, and the policies and practices of the commission in connection therewith.

(4) To receive, investigate, and pass upon complaints alleging unfair practices as defined in this chapter.

(5) To issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical handicap.

(6) To make such technical studies as are appropriate to effectuate the purposes and policies of this chapter and to publish and distribute the reports of such studies.

(7) To cooperate and act jointly or by division of labor with the United States or other states, and with political subdivisions of the state of Washington and their respective human rights agencies to carry out the purposes of this chapter. However, the powers which may be exercised by the commission under this subsection permit investigations and complaint dispositions only if the investigations are designed to reveal, or the complaint deals only with, allegations which, if proven, would constitute unfair practices under this chapter. The commission may perform such services for these agencies and be reimbursed therefor.

(8) To foster good relations between minority and majority population groups of the state through seminars, conferences, educational programs, and other intergroup relations activities. [1985 c 185 § 10; 1973 1st ex.s. c 214 § 4; 1973 c 141 § 7; 1971 ex.s. c 81 § 1; 1957 c 37 § 7; 1955 c 270 § 8. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Sunset Act application:** See note following RCW 49.60.050.

**Effective date—1971 ex.s. c 81:** "The effective date of this act shall be July 1, 1971." [1971 ex.s. c 81 § 6.] "this act" consists of RCW 49.60.120, 49.60.130, 49.60.180, 49.60.190, and 49.60.200.

Human rights commission to investigate unlawful use of refueling services for disabled. RCW 70.84.090.

**49.60.130 May create advisory agencies and conciliation councils.** The commission has power to create such advisory agencies and conciliation councils, local, regional, or state-wide, as in its judgment will aid in effectuating the purposes of this chapter. The commission may empower them to study the problems of discrimination in all or specific fields of human relationships or in specific instances of discrimination because of sex, race, creed, color, national origin, marital status, age, or the presence of any sensory, mental, or physical handicap; to foster through community effort or otherwise good will, cooperation, and conciliation among the groups and elements of the population of the state, and to make recommendations to the commission for the development of policies and procedures in general and in specific instances, and

for programs of formal and informal education which the commission may recommend to the appropriate state agency.

Such advisory agencies and conciliation councils shall be composed of representative citizens, serving without pay, but with reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and the commission may make provision for technical and clerical assistance to such agencies and councils and for the expenses of such assistance. The commission may use organizations specifically experienced in dealing with questions of discrimination. [1985 c 185 § 11; 1975-'76 2nd ex.s. c 34 § 146; 1973 1st ex.s. c 214 § 5; 1973 c 141 § 8; 1971 ex.s. c 81 § 2; 1955 c 270 § 9. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Sunset Act application:** See note following RCW 49.60.050.

**Effective date—Severability—1975-'76 2nd ex.s. c 34:** See notes following RCW 2.08.115.

**Effective date—1971 ex.s. c 81:** See note following RCW 49.60.120.

**49.60.140 Commission may hold hearings and subpoena witnesses.** The commission has power to hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the commission. The commission may make rules as to the issuance of subpoenas by individual members, as to service of complaints, decisions, orders, recommendations and other process or papers of the commission, its member, agent, or agency, either personally or by registered mail, return receipt requested, or by leaving a copy thereof at the principal office or place of business of the person required to be served. The return post office receipt, when service is by registered mail, shall be proof of service of the same. [1985 c 185 § 12; 1955 c 270 § 10. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Sunset Act application:** See note following RCW 49.60.050.

**49.60.150 Witnesses compelled to testify.** No person shall be excused from attending and testifying or from producing records, correspondence,

documents or other evidence in obedience to the subpoena of the commission or of any individual member, on the ground that the testimony or evidence required of the person may tend to incriminate or subject the person to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which the person is compelled, after having claimed the privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify. [1985 c 185 § 13; 1955 c 270 § 11. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Sunset Act application:** See note following RCW 49.60.050.

**49.60.160 Refusals may be punished as contempt of court.** In case of contumacy or refusal to obey a subpoena issued to any person, the superior court of any county within the jurisdiction of which the investigation, proceeding, or hearing is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof. [1985 c 185 § 14; 1955 c 270 § 12. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Sunset Act application:** See note following RCW 49.60.050.

**49.60.170 Witness fees—Deposition fees.** Witnesses before the commission, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of this state. Witnesses whose depositions are taken and the person taking the same shall be entitled to same fees as are paid for like services in the courts of the state. [1985 c 185 § 15; 1955 c 270 § 13. Prior: 1949 c 183 § 6, part; Rem. Supp. 1949 § 7614-25, part.]

**Sunset Act application:** See note following RCW 49.60.050.  
Courts of record—Witnesses: Chapter 2.40 RCW  
Discovery and depositions: Title 5 RCW, see also **Rules of Court**,  
CR 26-37

**49.60.175 Unfair practices of financial institutions.** It shall be an unfair practice to use the sex, race, creed, color, national origin, marital status, or the presence of any sensory, mental, or physical handicap of any person concerning an application for credit in any credit transaction to determine the credit worthiness of an applicant. [1979 c 127 § 4; 1977 ex.s. c 301 § 14; 1973 c 141 § 9; 1959 c 68 § 1]

Fairness in lending act: RCW 30.04.500 through 30.04.515

**49.60.176 Unfair practices with respect to credit transactions.** (1) It is an unfair practice for any person whether acting for himself or another in connection with any credit transaction because of race, creed, color, national origin, sex, marital status, or the presence of any sensory, mental, or physical handicap.

(a) To deny credit to any person;

(b) To increase the charges or fees for or collateral required to secure any credit extended to any person;

(c) To restrict the amount or use of credit extended or to impose different terms or conditions with respect to the credit extended to any person or any item or service related thereto;

(d) To attempt to do any of the unfair practices defined in this section.

(2) Nothing in this section shall prohibit any party to a credit transaction from considering the credit history of any individual applicant.

(3) Further, nothing in this section shall prohibit any party to a credit transaction from considering the application of the community property law to the individual case or from taking reasonable action thereon. [1979 c 127 § 5; 1973 c 141 § 5.]

**49.60.178 Unfair practices with respect to insurance transactions.** It is an unfair practice for any person whether acting for himself or another in connection with an insurance transaction or transaction with a health maintenance organization to cancel or fail or refuse to issue or renew insurance or a health maintenance agreement to any person

because of sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap: *Provided*, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this section. For the purposes of this section, "insurance transaction" is defined in RCW 48.01.060, health maintenance agreement is defined in RCW 48.46.020, and "health maintenance organization" is defined in RCW 48.46.020.

The fact that such unfair practice may also be a violation of chapter 48.30, 48.44, or 48.46 RCW does not constitute a defense to an action brought under this section.

The insurance commissioner, under RCW 48.30.300, and the human rights commission, under chapter 49.60 RCW, shall have concurrent jurisdiction under this section and shall enter into a working agreement as to procedure to be followed in complaints under this section. [1984 c 32 § 1; 1979 c 127 § 6; 1974 ex.s. c 32 § 2; 1973 c 141 § 6.]

**49.60.180 Unfair practices of employer defined.** It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification: *Provided*, That the prohibition against discrimination because of such handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved.

(2) To discharge or bar any person from employment because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap: *Provided*, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to

be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language. [1985 c 185 § 16; 1973 1st ex.s. c 214 § 6; 1973 c 141 § 10; 1971 ex.s. c 81 § 3; 1961 c 100 § 1; 1957 c 37 § 9. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

**Effective date—**1971 ex.s. c 81: See note following RCW 49.60.120

Element of age not to affect apprenticeship agreements: RCW 49.04.910

Labor—Prohibited practices: Chapter 49.44 RCW

Unfair practices in employment because of age of employee or applicant: RCW 49.44.090

**49.60.190 Unfair practices of labor unions defined.** It is an unfair practice for any labor union or labor organization:

(1) To deny membership and full membership rights and privileges to any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

(2) To expel from membership any person because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap.

(3) To discriminate against any member, employer, employee, or other person to whom a duty of representation is owed because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap. [1985 c 185 § 17; 1973 1st ex.s. c 214 § 8; 1973 c 141 § 11; 1971 ex.s. c 81 § 4; 1961 c 100 § 2; 1957 c 37 § 10. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

**Effective date—**1971 ex.s. c 81: See note following RCW 49.60.120

Element of age not to affect apprenticeship agreements: RCW 49.04.910

**49.60.200 Unfair practices of employment agencies.** It is an unfair practice for any employment agency to fail or refuse to classify properly or refer for employment, or otherwise to discriminate against, an individual because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap, or to print or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination as to age, sex, race, creed, color, or national origin, or the presence of any sensory, mental, or physical handicap, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: *Provided*, Nothing contained herein shall prohibit advertising in a foreign language. [1973 1st ex.s. c 214 § 9; 1973 c 141 § 12; 1971 ex.s. c 81 § 5; 1961 c 100 § 3; 1957 c 37 § 11. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

**Effective date—**1971 ex.s. c 81: See note following RCW 49.60.120

Element of age not to affect apprenticeship agreements: RCW 49.04.910

Fraud by employment agent: RCW 49.44.050

**49.60.205 Age discrimination—Limitation.** No person shall be considered to have committed an unfair practice on the basis of age discrimination unless the practice discriminates against a person between the age of forty and seventy years and violates RCW 49.44.090. It is a defense to any complaint of an unfair practice of age discrimination that the practice does not violate RCW 49.44.090. [1985 c 185 § 28.]

**49.60.210 Unfair to discriminate against person opposing unfair practice.** It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter. [1985



c 185 § 18; 1957 c 37 § 12. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

**49.60.215 Unfair practices of places of public resort, accommodation, assemblage, amusement.** It shall be an unfair practice for any person or his agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sex, the presence of any sensory, mental, or physical handicap, or the use of a trained dog guide by a blind, deaf, or physically disabled person: *Provided*, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a handicapped person except as otherwise required by law: *Provided*, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice. [1985 c 203 § 1; 1985 c 90 § 6; 1979 c 127 § 7; 1957 c 37 § 14.]

*Reviser's note:* This section was amended by 1985 c 90 § 6 and by 1985 c 203 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Denial of civil rights. RCW 9.91.010.

**49.60.220 Unfair practice to aid violation.** It is an unfair practice for any person to aid, abet, encourage, or incite the commission of any unfair practice, or to attempt to obstruct or prevent any other person from complying with the provisions of this chapter or any order issued thereunder. [1957 c 37 § 13. Prior: 1949 c 183 § 7, part; Rem. Supp. 1949 § 7614-26, part.]

**49.60.222 Unfair practices with respect to real estate transactions, facilities, or services.** It is an unfair practice for any person, whether acting for himself or another, because of sex, marital status, race, creed, color, national origin, the presence of

any sensory, mental, or physical handicap, or the use of a trained dog guide by a blind or deaf person:

(1) To refuse to engage in a real estate transaction with a person;

(2) To discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith;

(3) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(4) To refuse to negotiate for a real estate transaction with a person;

(5) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property;

(6) To print, circulate, post, or mail, or cause to be so published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(7) To offer, solicit, accept, use, or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(8) To expel a person from occupancy of real property;

(9) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions; or

(10) To attempt to do any of the unfair practices defined in this section.

Notwithstanding any other provision of law, it shall not be an unfair practice or a denial of civil rights for any public or private educational institution to separate the sexes or give preference to or

limit use of dormitories, residence halls, or other student housing to persons of one sex or to make distinctions on the basis of marital or family status.

This section shall not be construed to require structural changes, modifications, or additions to make facilities accessible to a handicapped person except as otherwise required by law. Nothing in this section affects the rights and responsibilities of landlords and tenants pursuant to chapter 59.18 RCW. [1979 c 127 § 8; 1975 1st ex.s. c 145 § 1; 1973 c 141 § 13; 1969 ex.s. c 167 § 4.]

*Severability*—1969 ex.s. c 167: See note following RCW 49.60.010.

**49.60.223 Unfair practice to induce sale or rental of real property by representations regarding entry into neighborhood of persons of particular race, handicap, etc.** It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, national origin, or with any sensory, mental, or physical handicap. [1979 c 127 § 9; 1969 ex.s. c 167 § 5.]

*Severability*—1969 ex.s. c 167: See note following RCW 49.60.010.

**49.60.224 Provisions of real property contract restricting conveyance, encumbrance, occupancy, or use to persons of particular race, handicap, etc., void—Unfair practice.** (1) Every provision in a written instrument relating to real property which purports to forbid or restrict the conveyance, encumbrance, occupancy, or lease thereof to individuals of a specified race, creed, color, national origin, or with any sensory, mental, or physical handicap, and every condition, restriction, or prohibition, including a right of entry or possibility of reverter, which directly or indirectly limits the use or occupancy of real property on the basis of race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap is void.

(2) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under this section or to honor or attempt to honor such a provision in the chain of title. [1979 c 127 § 10; 1969 ex.s. c 167 § 6.]

*Severability*—1969 ex.s. c 167: See note following RCW 49.60.010.

**49.60.225 Award to complainant for loss of rights secured.** When a determination has been made under RCW 49.60.250 that an unfair practice involving real property has been committed, the commission may, in addition to other relief authorized by RCW 49.60.250, award the complainant up to one thousand dollars for loss of the right secured by RCW 49.60.010, 49.60.030, 49.60.040, and 49.60.222 through 49.60.226, as now or hereafter amended, to be free from discrimination in real property transactions because of sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical handicap. Enforcement of the order and appeal therefrom by the complainant or respondent shall be made as provided in RCW 49.60.260 and 49.60.270. [1985 c 185 § 19; 1979 c 127 § 11; 1973 c 141 § 14; 1969 ex.s. c 167 § 7.]

*Severability*—1969 ex.s. c 167: See note following RCW 49.60.010.

**49.60.226 Cooperative agreements between units of government for processing complaints.** The commission and units of local government administering ordinances with provisions similar to the real estate provisions of the law against discrimination are authorized and directed to enter into cooperative agreements or arrangements for receiving and processing complaints so that duplication of functions shall be minimized and multiple hearings avoided. No complainant may secure relief from more than one instrumentality of state, or local government, nor shall any relief be granted by any state or local instrumentality if relief has been granted or proceedings are continuing in any federal agency, court, or instrumentality, unless such proceedings have been deferred pending state action. [1985 c 185 § 20; 1969 ex.s. c 167 § 8.]

*Sunset Act application:* See note following RCW 49.60.050.

*Severability*—1969 ex.s. c 167: See note following RCW 49.60.010.

**49.60.230 Complaint may be filed with commission.** Who may file a complaint:

(1) Any person claiming to be aggrieved by an alleged unfair practice may, personally or by his or



her attorney, make, sign, and file with the commission a complaint in writing under oath. The complaint shall state the name and address of the person alleged to have committed the unfair practice and the particulars thereof, and contain such other information as may be required by the commission.

(2) Whenever it has reason to believe that any person has been engaged or is engaging in an unfair practice, the commission may issue a complaint.

(3) Any employer or principal whose employees, or agents, or any of them, refuse or threaten to refuse to comply with the provisions of this chapter may file with the commission a written complaint under oath asking for assistance by conciliation or other remedial action.

Any complaint filed pursuant to this section must be so filed within six months after the alleged act of discrimination. [1985 c 185 § 21; 1957 c 37 § 16; 1955 c 270 § 15. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

*Sunset Act application:* See note following RCW 49.60.050.

**49.60.240 Complaint investigated—Conference, conciliation—Agreement, findings.** After the filing of any complaint, the chairperson of the commission shall refer it to the appropriate section of the commission's staff for prompt investigation and ascertainment of the facts alleged in the complaint. The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to written findings of fact, and a finding shall be made that there is or that there is not reasonable cause for believing that an unfair practice has been or is being committed. A copy of said findings shall be furnished to the complainant and to the person named in such complaint, hereinafter referred to as the respondent.

If the finding is made that there is reasonable cause for believing that an unfair practice has been or is being committed, the commission's staff shall immediately endeavor to eliminate the unfair practice by conference, conciliation and persuasion.

If an agreement is reached for the elimination of such unfair practice as a result of such conference, conciliation and persuasion, the agreement shall be reduced to writing and signed by the respondent, and an order shall be entered by the commission setting forth the terms of said agreement. No order

shall be entered by the commission at this stage of the proceedings except upon such written agreement.

If no such agreement can be reached, a finding to that effect shall be made and reduced to writing, with a copy thereof furnished to the complainant and the respondent. [1985 c 185 § 22; 1981 c 259 § 1; 1957 c 37 § 17; 1955 c 270 § 16. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

*Sunset Act application:* See note following RCW 49.60.050. RCW 49.60.240 through 49.60.280 applicable to complaints concerning unlawful use of refueling services for disabled. RCW 70.84.090.

**49.60.250 Hearing of complaint by administrative law judge—Order.** (1) In case of failure to reach an agreement for the elimination of such unfair practice, and upon the entry of findings to that effect, the entire file, including the complaint and any and all findings made, shall be certified to the chairperson of the commission. The chairperson of the commission shall thereupon request the appointment of an administrative law judge under Title 34 RCW to hear the complaint and shall cause to be issued and served in the name of the commission a written notice, together with a copy of the complaint, as the same may have been amended, requiring the respondent to answer the charges of the complaint at a hearing before the administrative law judge, at a time and place to be specified in such notice.

(2) The place of any such hearing may be the office of the commission or another place designated by it. The case in support of the complaint shall be presented at the hearing by counsel for the commission. *Provided,* That the complainant may retain independent counsel and submit testimony and be fully heard. No member or employee of the commission who previously made the investigation or caused the notice to be issued shall participate in the hearing except as a witness, nor shall the member or employee participate in the deliberations of the administrative law judge in such case. Any endeavors or negotiations for conciliation shall not be received in evidence.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit

testimony and be fully heard. The respondent has the right to cross-examine the complainant.

(4) The administrative law judge conducting any hearing may permit reasonable amendment to any complaint or answer. Testimony taken at the hearing shall be under oath and recorded.

(5) If, upon all the evidence, the administrative law judge finds that the respondent has engaged in any unfair practice, the administrative law judge shall state findings of fact and shall issue and file with the commission and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair practice and to take such affirmative action, including, (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, an admission or restoration to full membership rights in any respondent organization, or to take such other action as, in the judgment of the administrative law judge, will effectuate the purposes of this chapter, including action that could be ordered by a court, except that damages for humiliation and mental suffering shall not exceed one thousand dollars, and including a requirement for report of the matter on compliance.

(6) The final order of the administrative law judge shall include a notice to the parties of the right to obtain judicial review of the order by appeal in accordance with the provisions of RCW 34.04.130 or 34.04.133, and that such appeal must be served and filed within thirty days after the service of the order on the parties.

(7) If, upon all the evidence, the administrative law judge finds that the respondent has not engaged in any alleged unfair practice, the administrative law judge shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(8) An order dismissing a complaint may include an award of reasonable attorneys' fees in favor of the respondent if the administrative law judge concludes that the complaint was frivolous, unreasonable, or groundless.

(9) The commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure. [1985 c 185 § 23; 1983 c 293 § 1; 1981 c 259 § 2; 1957 c 37 § 18; 1955 c 270 § 17. Prior: 1949 c 183 § 8, part; Rem. Supp. 1949 § 7614-27, part.]

*Sunset Act application:* See note following RCW 49.60.050.

**Effective date—1981 c 259:** "Sections 2, 3, 4 and 5 of this 1981 act shall take effect upon the enactment of House Bill 101, 1981 Regular Session." [1981 c 259 § 7.] Sections 2, 3, 4 and 5 of 1981 c 259 consist of amendments to RCW 49.60.250, 49.60.260, 49.60.270 and the enactment of RCW 49.60.330, respectively. House Bill 101 was enacted as chapter 67, Laws of 1981. It was signed by the governor on April 25, 1981. Since chapter 67, Laws of 1981 took effect on July 1, 1982, the apparent intent is for sections 2, 3, 4 and 5 of 1981 c 259 to take effect on that date. For effective date of 1981 c 67, see note following RCW 34.12.010.

Assignment of administrative law judge for human rights commission proceedings. RCW 34.12.037.

**49.60.260 Court may enforce orders of administrative law judge—Appeal from court order.** (1) The commission shall petition the court within the county wherein any unfair practice occurred or wherein any person charged with an unfair practice resides or transacts business for the enforcement of any final order which is not complied with and is issued by the commission or an administrative law judge under the provisions of this chapter and for appropriate temporary relief or a restraining order, and shall certify and file in court the final order sought to be enforced. Within five days after filing such petition in court, the commission shall cause a notice of the petition to be sent by registered mail to all parties or their representatives.

(2) From the time the petition is filed, the court shall have jurisdiction of the proceedings and of the questions determined thereon, and shall have the power to grant such temporary relief or restraining order as it deems just and suitable.

(3) If the petition shows that there is a final order issued by the commission or administrative law judge under RCW 49.60.240 or 49.60.250 and that the order has not been complied with in whole or in part, the court shall issue an order directing the person who is alleged to have not complied with the administrative order to appear in court at a time designated in the order, not less than ten days from the date thereof, and show cause why the administrative order should not be enforced according to the terms. The commission shall immediately serve the person with a copy of the court order and the petition.

(4) The administrative order shall be enforced by the court if the person does not appear, or if the person appears and the court finds that:

(a) The order is regular on its face;

(b) The order has not been complied with; and  
(c) The person's answer discloses no valid reason why the order should not be enforced, or that the reason given in the person's answer could have been raised by review under RCW 34.04.130, and the person has given no valid excuse for failing to use that remedy.

(5) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to a review by the supreme court or the court of appeals, on appeal, by either party, irrespective of the nature of the decree or judgment. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the supreme court or the court of appeals, and the record so certified shall contain all that was before the lower court. [1985 c 185 § 24; 1981 c 259 § 3; 1971 c 81 § 118; 1957 c 37 § 21. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

Rules of court: Cf. RAP 2.2, 18.22.

Sunset Act application: See note following RCW 49.60.050.

Effective date—1981 c 259: See note following RCW 49.60.250.

**49.60.270 Appeal from orders of administrative law judge.** Any respondent or complainant, including the commission, aggrieved by a final order of an administrative law judge may obtain judicial review of such order as provided under the administrative procedure act, chapter 34.04 RCW. From the time a petition for review is filed, the court has jurisdiction to grant to any party such temporary relief or restraining order as it deems just and suitable. If the court affirms the order, it shall enter a judgment and decree enforcing the order as affirmed. [1985 c 185 § 25; 1981 c 259 § 4; 1957 c 37 § 22. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

Sunset Act application: See note following RCW 49.60.050.

Effective date—1981 c 259: See note following RCW 49.60.250.

**49.60.280 Court shall expeditiously hear and determine.** Petitions filed under RCW 49.60.260 and 49.60.270 shall be heard expeditiously and determined upon the transcript filed, without requirement of printing. Hearings in the court under this

chapter shall take precedence over all other matters, except matters of the same character. [1957 c 37 § 23. Prior: 1949 c 183 § 9, part; Rem. Supp. 1949 § 7614-27A, part.]

Sunset Act application: See note following RCW 49.60.050.

**49.60.310 Misdemeanor to interfere with or resist commission.** Any person who wilfully resists, prevents, impedes, or interferes with the commission or any of its members or representatives in the performance of duty under this chapter, or who wilfully violates an order of the commission, is guilty of a misdemeanor; but procedure for the review of the order shall not be deemed to be such wilful conduct. [1985 c 185 § 26; 1961 c 100 § 4; 1957 c 37 § 26; 1949 c 183 § 10; Rem. Supp. 1949 § 7614-28.]

Sunset Act application: See note following RCW 49.60.050.

**49.60.320 Governor may act on orders against state or political subdivisions.** In any case in which the commission shall issue an order against any political or civil subdivision of the state, or any agency, or instrumentality of the state or of the foregoing, or any officer or employee thereof, the commission shall transmit a copy of such order to the governor of the state. The governor shall take such action to secure compliance with such order as the governor deems necessary. [1985 c 185 § 27; 1949 c 183 § 11; Rem. Supp. 1949 § 7614-29.]

Sunset Act application: See note following RCW 49.60.050.

**49.60.330 First class cities of over one hundred twenty-five thousand population—Administrative remedies authorized.** Any city classified as a first class city under RCW 35.01.010 with over one hundred twenty five thousand population may enact ordinances consistent with this chapter to provide administrative remedies for any form of discrimination proscribed by this chapter: *Provided*, That the imposition of such administrative remedies shall be subject to judicial review. [1983 c 5 § 2; 1981 c 259 § 5.]

Effective date—1981 c 259: See note following RCW 49.60.250.

## Chapter 49.74 AFFIRMATIVE ACTION

### Sections

49.74.005	Legislative findings—Purpose.
49.74.010	Commission.
49.74.020	Affirmative action rules—Noncompliance—Notification—Hearing.
49.74.030	Noncompliance—Conciliation—Order.
49.74.040	Failure to reach conciliation agreement—Administrative hearing—Appeal.
49.74.050	Superior court—Remedies.

**49.74.005 Legislative findings—Purpose.** Discrimination because of race, creed, color, national origin, age, sex, marital status, or the presence of any sensory, mental, or physical handicap is contrary to the findings of the legislature and public policy. The legislature finds and declares that racial minorities, women, persons in protected age groups, persons with disabilities, Vietnam-era veterans, and disabled veterans are underrepresented in Washington state government employment.

The purpose of this chapter is to provide for enforcement measures for affirmative action within Washington state government employment and institutions of higher education in order to eliminate such underrepresentation. [1985 c 365 § 7.]

**49.74.010 Commission.** As used in this chapter, "commission" means the Washington state human rights commission. [1985 c 365 § 8.]

**49.74.020 Affirmative action rules—Noncompliance—Notification—Hearing.** If the commission reasonably believes that a state agency, an institution of higher education, or the state patrol has failed to comply with an affirmative action rule adopted under RCW 28B.16.100, 41.06.150, or 43.43.340, the commission shall notify the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol of the noncompliance, as well as the director of personnel or the director of the higher education personnel board, whichever is appropriate. The commission shall give the director of the state agency, president of the institution of higher education, or chief of the Washington state patrol an opportunity to be heard on the failure to comply. [1985 c 365 § 9.]

**49.74.030 Noncompliance—Conciliation—Order.** The commission in conjunction with the department of personnel, the higher education personnel board, or the state patrol, whichever is appropriate, shall attempt to resolve the noncompliance through conciliation. If an agreement is reached for the elimination of noncompliance, the agreement shall be reduced to writing and an order shall be issued by the commission setting forth the terms of the agreement. The noncomplying state agency, institution of higher education, or state patrol shall make a good faith effort to conciliate and make a full commitment to correct the noncompliance with any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW 28B.16.100(20), 41.06.150(21), and 43.43.340(5), whichever is appropriate. [1985 c 365 § 10.]

**49.74.040 Failure to reach conciliation agreement—Administrative hearing—Appeal.** If no agreement can be reached under RCW 49.74.030, the commission may refer the matter to the administrative law judge for hearing pursuant to RCW 49.60.250. If the administrative law judge finds that the state agency, institution of higher education, or state patrol has not made a good faith effort to correct the noncompliance, the administrative law judge shall order the state agency, institution of higher education, or state patrol to comply with this chapter. The administrative law judge may order any action that may be necessary to achieve compliance, provided such action is not inconsistent with the rules adopted under RCW 28B.16.100(20), 41.06.150(21), and 43.43.340(5), whichever is appropriate.

An order by the administrative law judge may be appealed to superior court. [1985 c 365 § 11.]

**49.74.050 Superior court—Remedies.** If the superior court finds that the state agency, institution of higher education, or state patrol has not made a good faith effort to correct the noncompliance, the court, in addition to any other penalties and sanctions prescribed by law, shall order the state agency, institution of higher education, or state patrol to comply with this chapter. The court may require any action deemed appropriate by the court which is consistent with the intent of this chapter. [1985 c 365 § 12.]



## RELATED STATUTES

**49.44.090 Unfair practices in employment because of age of employee or applicant—Exceptions.** It shall be an unfair practice:

(1) For an employer or licensing agency, because an individual is between the ages of forty and seventy, to refuse to hire or employ or license or to bar or to terminate from employment such individual, or to discriminate against such individual in promotion, compensation or in terms, conditions or privileges of employment: *Provided*, That employers or licensing agencies may establish reasonable minimum and/or maximum age limits with respect to candidates for positions of employment, which positions are of such a nature as to require extraordinary physical effort, endurance, condition or training, subject to the approval of the executive secretary of the Washington state human rights commission or the director of labor and industries through the division of industrial relations.

(2) For any employer, licensing agency or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses any limitation, specification or discrimination respecting individuals between the ages of forty and seventy: *Provided*, That nothing herein shall forbid a requirement of disclosure of birth date upon any form of application for employment or by the production of a birth certificate or other sufficient evidence of the applicant's true age.

Nothing contained in this section or in RCW 49.60.180 as to age shall be construed to prevent the termination of the employment of any person who is physically unable to perform his duties or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section; nor shall anything in this section or in RCW 49.60.180 be deemed to preclude the varying of insurance coverages according to an employee's age; nor shall this section be construed as applying to any state, county, or city law enforcement agencies, or as superseding any law fixing or authorizing the establishment of reasonable minimum or maximum age

limits with respect to candidates for certain positions in public employment which are of such a nature as to require extraordinary physical effort, or which for other reasons warrant consideration of age factors. [1985 c 185 § 30; 1983 c 293 § 2; 1961 c 100 § 5.]

Element of age not to affect apprenticeship agreements. RCW 49.04.910.

Unfair practices, discrimination because of age. RCW 49.60.180 through 49.60.205.

## CHAPTER 70.124 ABUSE OF NURSING HOME PATIENTS

### 70.124.060 Liability of persons making reports.

(1) A person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged patient abuse or neglect in a judicial proceeding shall in so doing be immune from any liability, civil or criminal, arising out of such reporting or testifying under any law of this state or its political subdivisions, and if such person is an employee of a nursing home or state hospital it shall be an unfair practice under chapter 49.60 RCW for the employer to dismiss said employee for such activity.

(2) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW. [1981 c 174 § 5; 1979 ex.s. c 228 § 6.]

## WASHINGTON CONSTITUTION

### Article IX EDUCATION

§ 1 PREAMBLE. It is the paramount duty of the state to make ample provisions for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

## Article XXXI (Amendment 61) SEX EQUALITY—RIGHTS AND RESPONSIBILITIES

Section 1. Equality Not Denied Because of Sex. Equality of rights and responsibility under the laws shall not be denied or abridged on account of sex.

## CHRONOLOGY

1949	Law Against Discrimination in employment enacted. Covered discrimination because of race, creed, color or national origin.
1957	Public accommodations added.
1961	Age discrimination in employment added.
1969	Real estate transactions added.
1971	Sex discrimination in employment added.
1973	Credit transactions and insurance transactions added. Covers discrimination because of sex, marital status, race, creed, or national origin.
	Handicap discrimination in employment added.
	Sex and marital status discrimination in real estate transactions added.
	Marital status discrimination in employment added.
1979	Handicap discrimination in real estate transactions, public accommodations, credit, and insurance added.





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## HUMAN RIGHTS COMMISSION

TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

PO BOX 1725

HELENA, MONTANA 59614

July 28, 1986

Rec'd  
8-1-86

Benjamin Schatz  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, CA 94114

Dear Mr. Schatz:

Please excuse the delay in my response. I have enclosed a copy of the Montana Human Rights Act regarding handicap including Section 49-4-101 et. seq. Montana Codes Annotated (hereinafter MCA) and 49-2-101, MCA, the definition of physical handicap is included at §5(16). Section 49-2-301, et. seq. prohibits discrimination based on a person's membership in a protected class, including physical handicap, and 49-3-201 et. seq. is the Governmental Code of Fair Practices which relates to the activities of a public entity.

The above mentioned sections prohibit discrimination based on a physical handicap or a perceived handicap. The Montana Human Rights Commission has informally taken the position that AIDS constitutes a handicap. This position has not been challenged either formally or informally. This includes the protection of persons with an AIDS related complex who would thereby be perceived to have the physical handicap of AIDS.

The Commission has promulgated rules regarding physical handicap discrimination as a reasonable demand of employment 24.9.1404 Administrative Rules of Montana (hereafter A.R.M.). I have enclosed a copy of that rule for your convenience. I have further included the Commission rule regarding unlawful, suspect and lawful pre-employment inquiries.

Again, please feel free to contact me if I can be of further assistance.

Very truly yours,

*Janice Frankino Doggett*  
Janice Frankino Doggett  
Staff Attorney  
Human Rights Division

Enclosures

# New Hampshire Commission for Human Rights

## COMMISSIONERS

GAIL F. PAINE, Chair  
KENNETH E. FREDETTE  
BARRY J. PALMER  
CELINA A. TAMPOSI  
GEORGE E. MCAVOY



81 SOUTH SPRING STREET  
CONCORD, NEW HAMPSHIRE 03301  
TEL. (603) 271-2767

## EXECUTIVE DIRECTOR

MERRYL GIBBS

## DEPUTY DIRECTOR

SUSAN MCKEVITT

June 23, 1986

NEW HAMPSHIRE

Benjamin Schatz, Esq.  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, CA 94114

Dear Mr. Schatz:

After discussing your letter with the Commissioners, I wish to reply informally to your question as to whether AIDS-based discrimination is illegal under the New Hampshire anti-discrimination laws. A formal opinion will not be issued until there is an appropriate case before the Commission.

Enclosed you will find a copy of the New Hampshire Statute (RSA 354-A) which forbids discrimination on the basis of handicap in employment, housing and public accommodations. Handicap is defined in section 354-A:3(13). Also enclosed is Part Hum 405 of the Commission's rules. As you will see from this section, a covered handicap under New Hampshire law is any "permanent, long term, or chronic physical or mental impairment which substantially limits one or more major life activities." Hum 405.01(b). I believe there can be little question that AIDS is a covered handicap under this rule.

AIDS related complex and the presence of HTLV-III antibodies would be covered handicaps only if they substantially limited one or more major life activities for the individual in question. However, if an individual with one of these conditions was perceived by an employer or landlord as having AIDS and excluded from employment or housing for that reason, that individual would be covered under the handicap discrimination law.

Please let me know if you need any further information. Also, I would greatly appreciate your sending me a copy of the results of your survey when it is completed.

Very truly yours,

(Ms.) Merryl Gibbs  
Executive Director



# STATE OF CONNECTICUT

## COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

90 WASHINGTON STREET HARTFORD, CONNECTICUT 06106

IN REPLY

(203) 566-7108

July 22, 1986

Benjamin Schatz, Esquire  
Director, AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, California 94114

Dear Mr. Schatz:

This letter responds to your inquiry of July 10 concerning the issue of AIDS-related, handicapped discrimination under state law.

The Connecticut Commission on Human Rights and Opportunities has accepted AIDS-related complaints under Connecticut's anti-discrimination laws prohibiting discrimination on the basis of physical disability. The types of discrimination prohibited under the relevant statutes are employment, housing, public accommodations, credit and state services. At this time the Commission has three AIDS related complaints pending before it.

If we can be of further assistance, please let us know.

Very truly yours,

STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

By: Arthur L. Green  
Director

ALG:syr  
cc: Jurate L. Vaitkus  
Assistant Director



STATE OF ILLINOIS  
**Department of Human Rights**

100 West Randolph Street, Illinois Center, Suite 10-100  
 Chicago, Illinois 60601  
 312/917-6200

James R. Thompson  
 Governor

Joyce E. Tucker  
 Director

June 27, 1986

Benjamin Schatz, Esq.  
 Director, AIDS Civil Rights Project  
 National Gay Rights Advocates  
 540 Castro Street  
 San Francisco, CA 94114

Dear Mr. Schatz:

I have been asked by Director Joyce E. Tucker to respond to your May 30, 1986 inquiry concerning this Department's position on Acquired Immune Deficiency syndrome ("AIDS").

The Illinois Human Rights Act ("Act"), Ill. Rev. Stat. ch 68, Section 1-101 et seq., gives the Illinois Department of Human Rights ("Department") the authority to accept and investigate charges of unlawful discrimination as defined by the Act. Section 1-103(Q) of the Act defines unlawful discrimination to include discrimination against a person because of his handicap. The Department's Interpretive Rules on Handicap Discrimination state, in part, that a physical handicap is a physical characteristic of a person, or the history of such characteristic, or the perception of such characteristic by the person complained against that is unrelated to the person's ability to perform the duties of a particular job or position. This handicapping condition must not be transitory or insubstantial and it must be significantly debilitating.

The Department has determined, that AIDS does fall within the meaning of "physical handicap" under our Act and the Interpretive Rules.

The aforementioned Rules also state that unlawful "perceived handicap" discrimination occurs when the complaining party is erroneously viewed by the person complained against as one who is or has been affected by a handicapping condition, e.g., AIDS. Accordingly, the Department has determined, that when the person

Mr. Benjamin Schatz  
 June 27, 1986  
 Page 2.

complained against discriminates against a charging party because he perceives that party to have AIDS, that action may be the basis for a "perceived handicap" (AIDS) charge.

The Act prohibits discrimination in five general areas: employment, housing, financial credit, public accommodations and sexual harassment in higher education. The public accommodations section prohibits discrimination in public accommodations and by public officials, who are defined in part as any officers or employees of the state, or any agency thereof.

The Department is accepting charges at the present time which allege either actual AIDS discrimination or perceived AIDS discrimination. The Department investigates these charges as it would any other charge of discrimination.

I hope we have answered all your questions. If you have any additional inquiries, do not hesitate to contact me.

Sincerely,

*Shelvin L. Hall*  
 Shelvin L. Hall  
 General Counsel

SLH/riw

cc: Joyce E. Tucker, Director



JEFFREY L. AMESTOY  
ATTORNEY GENERAL  
BRIAN L. BURGESS  
DEPUTY ATTORNEY GENERAL  
WILLIAM E. GRIFFIN  
CHIEF ASST. ATTORNEY GENERAL



STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER  
05602  
TEL: 802-828-3171

7-17-86

VERMONT

July 14, 1986

Benjamin Schatz, Esq.  
Director, AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, CA 94114

Dear Mr. Schatz:

Our Civil Rights Section of the Public Protection Division would give due consideration to anyone claiming handicap discrimination under Vermont's Fair Employment Practices Act on the basis of AIDS. However, we have not received such a complaint to date.

I hope that this information will be sufficient for your purposes.

Very truly yours,

Denise R. Johnson  
Chief, Public Protection Division

STATE OF KANSAS



June 13

COMMISSION ON CIVIL RIGHTS  
214 SOUTHWEST SIXTH AVENUE—1ST FLOOR  
LIBERTY BUILDING  
TOPEKA, KANSAS 66603-3780  
PHONE (913) 296-3206  
June 9, 1986

JOANNE E. BURST  
Executive Director  
ROBERT G. LAY  
Assistant Director  
RUSSELL W. LLOYD  
CHIEF COUNSEL  
BRANDON L. MEYER  
STATE ATTORNEY  
ARTHUR R. BRUCE  
SUPERVISOR  
NORMA JEAN HULL  
DEPUTY MANAGER

Benjamin Schatz, Esquire  
Director, AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, California 94114

Dear Mr. Schatz:

Your letter of May 30, 1986, has been passed to me for response.

Kansas Statutes Annotated 44-1002 contains the following definition of physical handicap:

" . . . the physical condition of a person, whether congenital or acquired by accident, injury or disease which constitutes a substantial disability, but is unrelated to such person's ability to engage in a particular job or occupation."

To date our Court of Appeals and Supreme Court have ruled on only two (2) physical handicap cases. In essence these decisions held that there must be a current physical impairment which substantially restricts one or more major life functions in order that a complaining party qualify as "physically handicapped."

In these cases (U.S.D. No. 259 v. Palmer, 7 Kan. As 2nd 319 and Padilla v. City of Topeka, 238 Kan. 218) the appellate courts have held, seemingly incongruously, that the subject condition must currently render the complainant actually unable to perform a life function in a satisfactory manner in order to qualify as a "substantial disability," but that independent medical advice that a currently non-disabling condition may potentially become disabling on the job constitutes job-relatedness. Thus in the first case a job applicant for a custodial position who reported on a pre-employment physical that during a much earlier

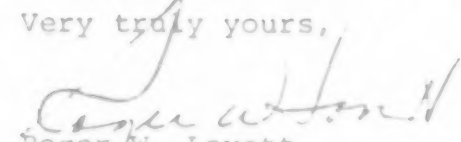
physical blood had been detected in his urine was denied employment on that basis alone on the advice of the examining physician. In the second case an applicant for a law-enforcement position had uncorrected vision which was below the agency's minimum standard, but which was corrected to 20/20. The applicant testified that he had satisfactorily been employed as a peace-officer for some time, and had encountered no problems with his vision. In both cases the courts held; a) that the applicants had no substantial disability, and; b) that the condition was job-related.

Moreover, our legislature has clearly rejected proposed amendments to the definition which would include "perceived" disability or handicap within the coverage of the act.

As of this time we have received no complaints based on AIDS, nor, to my knowledge, have we been contacted by anyone wishing to file such a complaint. When such a complaint is presented I have no doubt that it will be accepted and processed just as any other complaint based on physical handicap. However, given the existing case law I cannot predict that the outcome will be favorable.

In answer to your final question, in Kansas discrimination on the basis of physical handicap is prohibited in the areas of employment and public accommodations, but not in housing.

Very truly yours,

  
Roger W. Lovett  
Chief Legal Counsel

RWL/mks  
cc: Joanne E. Hurst,  
Executive Director

David F. Montoya  
Executive Director



OFFICE:  
930 BACA STREET, SUITE A  
SANTA FE, NEW MEXICO 87501  
PHONE: (505) 827-6420

HUMAN RIGHTS COMMISSION  
OF NEW MEXICO  
TONEY ANAYA  
Governor

June 18, 1986

Benjamin Schatz, Esquire  
Director, AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, California 94114

Dear Mr. Schatz:

In response to your letter of June 6th, it is our position that a person with AIDS or ARC would be protected under the handicap provisions of the New Mexico Human Rights Act. This protection would extend to the areas of employment, housing, credit and public accommodations.

Additionally, discrimination against a person because (s)he "has a record of such an impairment" or because (s)he "is regarded as having an impairment" (emphasis added) would also be unlawful.

I am enclosing copies of both our Act and Rules and Regulations which have been highlighted for your convenience.

I hope that this information meets your needs. If the Commission can be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

  
David F. Montoya  
Executive Director

DFM:ps

Encl: As stated

COMMISSIONERS  
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Chairperson  
Santa Fe, NM  
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Albuquerque, NM  
ERNESTINE A. FLOREZ  
Carlsbad, NM

# Rules and Regulations

New Mexico Human Rights Commission

Phone 827-6420

Effective November 20, 1983

## HUMAN RIGHTS COMMISSION

Rules and Regulations Revisions as Enacted by the Human Rights Commission on October 20, 1983:

By virtue of the authority vested in the Section 28-1-4 New Mexico Statutes Annotated, 1978 Compilation, the New Mexico Human Rights Commission on October 20, 1983 adopted the following amended rules, one (1) through fourteen (XIV) inclusive, as rules and regulations for implementation of the Human Rights Act, superseding all previous rules and regulations.

In accordance with Section 28-1-5 New Mexico Statutes Annotated, 1978 Compilation, notice was given and a public hearing was held on October 19, 1983, so that interested persons could present their views regarding these rules and regulations.

These rules and regulations will become effective thirty (30) days after filing.

### I. DEFINITIONS

A. The following definitions shall apply in construing the Human Rights Act, and rules and regulations adopted pursuant thereto:

1. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions.
2. "employer" means any person employing four or more persons, and any person acting for an employer.
3. "commission" means the Human Rights Commission.
4. "employee" means any person in the employ of an employer for employment.
5. "applicant for employment" means a person applying for a position as an employee.
6. "labor organization" means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment.
7. "employment agency" means any person regularly undertaking, with or without compensation, to procure opportunities to work or to procure, recruit or refer employees.
8. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment which is by its nature and use distinctly private.
9. "housing accommodation" means any building or portion of a building which is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual.



that an unlawful discriminatory practice occurred

27. "affirmative action" means a program of self-imposed or directed action steps taken by employment, housing, public accommodation and credit agencies designed to eliminate discriminatory or arbitrary barriers to the underutilization of protected groups. This action is established solely upon discretion to promote full participation for all persons otherwise qualified for jobs, housing, public accommodation and credit.

## II. FILING A COMPLAINT

### A. Persons who may file a complaint

1. Any person claiming to be aggrieved by an unlawful discriminatory practice may, by himself or herself, or through his or her legally authorized representative, make and sign a complaint and file said complaint with the Commission. An amendment may be filed any time thereafter.
2. Any Commissioner who has reason to believe that an unlawful discriminatory practice has occurred may make, sign and file a written complaint with the Commission. The complaint must state the facts which gave the Commissioner reason to believe that an unlawful discriminatory practice has occurred.

### B. Forms

1. The complaint of any person claiming to be aggrieved or the complaint of a Commissioner who has reason to believe an unlawful discriminatory practice has occurred shall be in writing and in a form acceptable to the Commission. The complainant may be assisted by the Commission in preparing his or her complaint.
2. A relief request form shall be made part of the investigative file.

### C. Contents of the Written Complaint. Each complaint shall contain

1. The name and address of the complainant.
2. The name and address of the respondent.
3. The date, place and description of the alleged unlawful discriminatory practice.
4. The basis on which the complaint is being filed.
5. The signature of the complainant.

### D. Manner of Filing the Complaint

1. The complaint must be delivered to the Commission either by personal delivery or by mail.
2. The complaint shall be deemed filed as of the date it is received at the Commission office; however, for the purpose of complying with the one hundred eighty (180) day requirement of Section 28-1-10(A), New

4

Mexico Statutes Annotated, 1978 Compilation, complaints which are filed first with any duly authorized civil rights agencies holding a work-sharing agreement with the Commission shall be deemed to have been filed with the Human Rights Commission as of the date filed with any of these agencies.

3. When the complaint is received at the Commission office the person accepting the complaint shall stamp and initial the complaint with the date it is received.

### E. Amendments

At any time during the course of an investigation up until the time of the determination, the complainant may file an amendment to his/her complaint so long as the amended complaint remains within the jurisdiction of the Commission.

### F. Notice to Respondent

Upon the filing of a complaint of amendment, the Commission shall within thirty (30) days furnish the respondent with a copy thereof by mail or in person.

### G. Withdrawal or Closure of the Complaint

1. The complainant may withdraw the complaint, amendment thereto or supplemental complaints at any time by signing a withdrawal form provided by the Commission, provided the Executive Director approves;
2. In the event that a complainant cannot be contacted for a thirty (30) day period at his or her last known address or forwarding address, or, in the event that a complainant refuses to cooperate with the Commission, the Executive Director shall administratively close the case, without prejudice;
3. In the event of a withdrawal or closure of a complaint, the Executive Director shall promptly notify the respondent of such action by mail.

### H. Jurisdiction

The Executive Director shall determine whether the Commission has jurisdiction to investigate a complaint at the time of filing. If at that time, or at any time during the investigation, it is determined that there is no jurisdiction, the complaint shall be dismissed and the complainant promptly notified by certified mail and respondent by regular mail.

## III. INVESTIGATIONS AND CONCILIATION

- A. As a part of the investigative process the Executive Director may require a fact-finding conference, and/or on-site investigation, with the parties prior to a determination on a complaint of discrimination. The conference is primarily an investigative forum intended to define the issues, to determine which elements are undisputed, to resolve those issues that can be resolved and to ascertain whether there is a basis for conciliation of the complaint.

5

10. "real property" means lands, households or commercial or industrial buildings, whether constructed or to be constructed, offered for sale or rent, and any land rented or leased for the use of parking, or storage of house trailers.

11. "unlawful discriminatory practices" means those unlawful practices and acts specified in Section 28-1-7, New Mexico Statutes Annotated, 1978 Compilation.

12. "commissioner" means one of the duly appointed members of the Human Rights Commission.

13. "executive director" means the coordinator and chief administrator responsible for carrying out the provisions of the Human Rights Act and the duly adopted rules and regulations of the Human Rights Commission.

14. "chairperson" means the duly appointed chairperson of the New Mexico Human Rights Commission or the Commissioner designated by the Commission to preside in the absence or incapacity of the duly appointed chairperson.

15. "respondent" means person, company, union, association, organization, agency, or any other enterprise named in a complaint as having allegedly engaged in an unlawful discriminatory practice.

16. "complainant" means any person who claims to be aggrieved by an unlawful discriminatory practice and who has filed a complaint with the Commission within one hundred eighty (180) days after the alleged unlawful discriminatory act was committed.

17. "certified mail" means with return receipt requested.

18. "handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities as defined in Section 28-1-21(J) New Mexico Statutes Annotated, 1978 Compilation, has a record of such an impairment, or is regarded as having such an impairment.

19. "physical or mental impairment" means, but is not limited to, any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, immune and lymphatic, skin, endocrine, any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

20. "has a record of such an impairment" means has a history of, or has been erroneously classified as having a mental or physical impairment that substantially limits one or more major life activities.

21. "is regarded as having an impairment" means having a physical or mental impairment that does not substantially limit major life activities but that is treated by a respondent as constituting such a limitation, has

23. "a qualified handicapped person with respect to housing accommodation, credit and acquisition or maintenance of particular real property" means a handicapped person whose handicap does not limit that person's ability to fulfill the obligations of occupancy, tenancy, ownership or credit responsibilities.

24. "reasonable accommodation" means, for employment purposes, such modifications or adaptations of the work environment or job responsibilities of a handicapped person as are necessary to enable him or her to perform the essential functions of the job in question and which do not impose an undue hardship on the employer.

25. "sexual discrimination" is defined to include, but not limited to, the following:

a. "sexual harassment" any unwanted and/or repeated physical or verbal action to pressure for sexual activity, including sexual advances, sexual contact, verbal or nonverbal sexual suggestions, sexual ridicule or sexual innuendos in order to:

1. obtain, retain, or advance in employment as relates to matters of compensation or the terms and conditions of employment;
2. obtain credit;
3. obtain housing; continue housing agreements;
4. be denied access or to limit public accommodations.

b. "pregnancy, childbirth, or related medical conditions" Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs. Further, women affected by pregnancy, childbirth or related medical conditions shall be treated the same in the areas of credit, housing and public accommodations.

c. "marital status" rules restricting persons because of their marital status which do not apply equally to the opposite sex with the same status.

26. "discrimination" means the decision made by the Executive Director that a complaint lacks probable cause to believe that an unlawful discriminatory practice occurred or that probable cause exists to believe

### 8.III. HEARING:

- A. Commission Complaint
  - 1. If, after a probable cause determination, efforts at conciliation have failed, or in the opinion of the Executive Director an informal conference cannot result in conciliation, the Commission shall issue a written complaint in its own name against the respondent. The Commission shall set forth the alleged discriminatory practice, the Commission's regulation or section of the Human Rights Act alleged to have been violated, and the relief requested.
  - 2. The Commission complaint shall require the respondent to answer the allegations of the Commission complaint by appearing at a hearing before the Commission on the date, time and place specified in the Commission complaint or by filing a written answer at the Commission office five (5) days prior to the scheduled hearing.
  - 3. The Commission complaint shall be properly served on the respondent. Such complaint shall advise the respondent that failure to answer the Commission complaint, or appear at the hearing, may result in the entry of a judgment or order against him or her.
  - 4. The hearing date shall not be more than fifteen (15) nor less than ten (10) days after service of the complaint. Such hearing shall be held in the county where respondent is doing business or where the alleged discriminatory practice occurred, at the discretion of the Commission.
- B. Answer to Commission Complaint
  - 1. The respondent shall either file a written answer to the Commission complaint or shall appear at the hearing before the Commission on the date specified and answer the allegations of the Commission complaint.
  - 2. If a written answer is filed it shall contain an admission or denial of each and every allegation in the Commission complaint unless respondent states he or she has no knowledge or information sufficient to form a belief. Failure to answer any allegation shall be deemed an admission of that allegation.
- C. Commission counsel may advise the Commission during the hearing and may assist in the preparation of the findings of fact, conclusions of law and order.
- D. Sequence of the Hearing
  - 1. Introduction by the presiding Commissioner
  - 2. Introduction of the panel
  - 3. Administration of oath to the parties and witnesses by presiding Commissioner
  - 4. Consideration of any prehearing orders

8

- B. The Commission's authority to investigate a complaint is not limited to the procedure outlined in A. above.
- C. The Executive Director may invite the parties to engage in conciliation discussions. Should conciliation be reached, the terms shall be reduced to writing in a conciliation agreement and will be signed by the parties and the Executive Director. If a conciliation agreement is signed, no determination need be issued by the Executive Director.

### IV. DETERMINATION PROCEDURES

- A. Before a determination is issued the Executive Director may order reinstatement of any complaint.
- B. After an investigation and summary of evidence are completed, the Executive Director will issue a determination unless a conciliation agreement has been signed.
- C. The Executive Director shall serve the determination and the summary of evidence on both the complainant and respondent. If the determination is that no probable cause exists, the Executive Director will advise the complainant that the complaint is dismissed and of his/her right to appeal the determination in district court within thirty (30) days after receipt of the determination. If the determination is probable cause, and that discrimination took place, the Executive Director will attempt conciliation and, if that fails, cause to have issued a Commission complaint for hearing.

### V. CONCILIATION AND PERSUASION

- A. If the Executive Director finds probable cause for the allegations made in the complaint, he or she shall endeavor to eliminate such discriminatory practice by means of conciliation and persuasion with the respondent. If endeavors at conciliation succeed, a copy of the conciliation agreement shall be served upon the complainant either by personal delivery or certified mail at his or her last known address, together with a notice of his or her right to request a hearing before a Commissioner if the conciliation agreement does not conform to the relief requested.
- B. Requests for Review of Conciliation Agreements:
  - 1. Requests for review of conciliation agreements shall be in writing and shall be filed at the Commission office within ten (10) days from the date of receipt of the conciliation agreement, and shall state the grounds upon which the review is requested.
  - 2. The complainant and respondent shall be given at least ten (10) days written notice of the time and place of the review of the conciliation agreements. The notice shall be given by personal delivery or by certified mail and shall advise the complainant and respondent of their right to attend the hearing and to present evidence, providing that the Executive Director cannot reach an amicable solution with all parties.

- 5. Opening statement by the complainant
  - 6. Opening statement by the respondent
  - 7. Presentation of complainant's case
  - 8. Presentation of respondent's case
  - 9. Closing argument by complainant
  - 10. Closing argument by respondent
- E. Appearance:
    - 1. The complainant must be present at the hearing and may present testimony or evidence and may either in person or by counsel examine and cross-examine witnesses.
    - 2. If, after receiving proper notice, the complainant does not appear at the hearing, the complaint may be dismissed.
  - F. Continuation and Adjournment:

The Commission or Commissioner may continue hearings from day to day or adjourn them to a later date or to a different place either by announcement at hearings or by appropriate notice to all parties.
  - G. Oral Arguments, Briefs and Findings:
    - 1. The Commission shall permit the parties or their attorneys to present oral arguments at hearings and file briefs within ten (10) days after the adjournment of the hearing. The Commission shall allow the filing of reply briefs within five (5) days of submission of the briefs.
    - 2. Each party shall submit proposed findings of fact and conclusions of law to the Commission within ten (10) days after the adjournment of the hearing.
  - H. Improper Conduct:

The Commission may exclude from the hearing room or from further participation in the proceedings any person who engages in improper conduct, excepting only a party or his attorney or a witness engaged in testifying.
  - I. Sequestering Witnesses:

The Commission may sequester witnesses from the hearing until the time of their testimony. A respondent will be allowed to have present throughout the hearing a representative, even though the representative may be called as a witness.
  - J. Burden of Proof:

The burden of proof is upon the complainant. The standard of proof shall be by a preponderance of evidence.

9

- 3. If, after having received proper notice, the complainant does not appear at the hearing, the case shall be considered closed, unless it is shown to the satisfaction of the hearing officer that the failure to appear was due to circumstances beyond the complainant's control.

### VI. SECTION VI (BRIEFING HEARING BY COMMISSION) IS REPEALED.

### VII. PREHEARING CONFERENCES AND ORDERS

- A. A prehearing conference, conducted by the Executive Director or his assignee, shall be held prior to any hearing of a complaint by the Commission.
- B. Representatives who will be participating in a hearing will attend the prehearing conference. Unless otherwise directed by the Executive Director or assignee, the representatives for the complainant will draft a proposed prehearing order in keeping with the action taken at the conference. The order will be substantially in accordance with the approved form of prehearing orders. Copies of a prehearing check list and approved form of the prehearing order are available at the office of the New Mexico Human Rights Commission.
- C. The proposed prehearing order drafted by the complainant's representative shall be submitted to the respondent's representative for approving signature and, if approved, submitted to the Executive Director, or assignee, within ten (10) days from the date of the prehearing conference or at such time as the Executive Director, or assignee, shall order.
- D. All representatives have reciprocal duties to cooperate in submitting promptly a proper prehearing order for the approval of the Executive Director, or assignee, in accordance with the above procedure.
- E. The prehearing order entered by the Executive Director or assignee, shall control the issues of the subsequent hearing. The prehearing order shall not be amended except by consent of the parties and the Executive Director or assignee, or by order of the Executive Director or assignee, to prevent manifest injustice.
- F. Representatives shall mark all exhibits before hearing. Exhibits for the complainant shall be marked numerically. Those for respondents shall be marked alphabetically. The identification number or letter shall remain the same whether the exhibit is accepted or rejected. Separate documents, photographs, papers and other written or printed instruments shall be given an individual exhibit number. An exhibit consisting of more than one (1) page shall be fastened and each page shall be numbered. Five (5) days prior to the start of a hearing, representatives shall file with the Commission five (5) copies of the list of exhibits intended to be offered at the hearing.
- G. Evidence introduced as exhibits will be retained by the Commission until the appeal period has expired or final disposition if the matter is appealed.
- H. Five (5) days prior to the start of the hearing, representatives shall file with the Commission five (5) copies of the list of witnesses intended to be called at the hearing.

6

7



#### D. UTILIZATION ANALYSIS

The employer must identify those areas within the employer's work force in which protected groups are being underutilized. A utilization analysis is composed of four different parts: a work force analysis, identification of job groups within the facility, an availability analysis, and an underutilization analysis. Each employer must show utilization for each facility according to geographic location within the context of local work availability.\*

#### E. ESTABLISHMENT OF GOALS AND TIMETABLES

For each job group in which underutilization of protected groups is found, the employer must set up a system of goals and timetables for correcting the deficiencies.\*

#### F. IDENTIFICATION OF PROBLEM AREAS AND EMPLOYMENT PRACTICES THAT HAVE AN ADVERSE EFFECT ON PROTECTED GROUPS

The employer must identify key job titles in which protected groups are underrepresented in relation to their known availability in the work force and those employment practices which have an adverse effect on protected groups so as to discourage their employment or full utilization. Employers must study flow recruitment procedures, selection and placement procedures, promotions and transfers, seniority systems and terminations.\*

#### G. ESTABLISHMENT OF SYSTEM FOR MONITORING COMPLIANCE

The employer is obligated to set up a system of monitoring to determine if the Affirmative Action Program is working and, if not, why not. The Commission may require periodic reviews of the agency and/or employer's Affirmative Action Program.

#### H. ESTABLISHMENT OF SYSTEM OF RECORD KEEPING IN PREPARATION FOR COMPLIANCE REVIEW

At any time during the initial stages of review or at any time in subsequent stages, the employer will be asked to supply the Human Rights Commission staff with certain records such as applicant flow data, hiring records, testing results, wage and job information, upward mobility action records, and records of termination and demotion. The employer must devise a system by which this information can be compiled for use as needed.

12

#### IX. SUBPOENAS AND SUBPOENAS DUES TESTIM

A. The Commission, through its Executive Director, may issue subpoenas and subpoenas duces tecum in its own name. The Commission may also issue subpoenas and subpoenas duces tecum upon application of a party to the complaint, but service of the subpoenas and subpoenas duces tecum will be made by the requesting party in the same manner as prescribed by law for civil actions in the district courts of this State.

B. The cost of service, and witness and mileage fees for all hearings shall be borne by the party at whose instance subpoenas and subpoenas duces tecum are issued and the fees paid therefore shall be the same as those paid by the district courts of the State of New Mexico.

#### X. FINAL ORDER

Within thirty (30) days after the final adjournment of a hearing, the Commission shall issue its findings of fact and order. Within five (5) days thereafter, the Commission shall cause to be sent by certified mail to the address of record of each party of record and his or her attorney, if any, a written copy of the order.

#### XI. TRANSCRIPTS

A. Upon receipt of the notice of appeal, the Commission will file as much of the transcript of the record as requested.

B. All costs of transcribing a hearing pursuant to Section 28-1-13(B) New Mexico Statutes Annotated, 1978 Compilation, will be paid by the party requesting the transcript. However, nothing in these rules and regulations will be deemed as prohibiting an agreement between a complainant and respondent concerning the cost of the transcript.

#### XII. CONFIDENTIALITY

The Commission complaint, Commission decisions and Commission orders will be considered public records. Any other information contained within a Commission investigation file will not be considered public records, except as determined by law. This provision will not be applicable to a request for information by the complainant, respondent, or their respective attorneys. Nor does this provision apply to disclosure to representatives of any duly authorized civil rights agencies holding a worksharing agreement with the Commission.

#### XIII. PROCEDURES FOR FILING AN AFFIRMATIVE ACTION PLAN WITH THE HUMAN RIGHTS COMMISSION

All New Mexico state departments, agencies and universities shall file an updated Affirmative Action Plan with the Commission in accordance with the prevailing Executive Order.

#### I. GRIEVANCE

The grievance procedure is an internal process whereby employees may file complaints, including allegations of discrimination, to an impartial party or parties without fear of reprisal. Findings and recommendations shall be submitted to the highest administrative officer of the employer for review and appropriate action.

#### J. STATEMENT ON UTILIZATION OF HANDICAPPED

The employer shall demonstrate a positive attitude in relation to the hiring, training, and promotion of the handicapped. It shall declare a policy of support for removing all barriers to employment of the handicapped. The employer will, through a voluntary process of employee self-identification, identify its handicapped population.

\*It is understood that the limitation of data would affect the capacity of an agency to determine specific work force availability with precision.

13

#### XIV. AFFIRMATIVE ACTION PLAN CONTENTS

The following items represent standard Affirmative Action compliance in employment.

##### A. EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

The employer must indicate a positive attitude toward equal employment opportunity and indicate that decisions regarding recruitment, hiring, training and promotions will be made without regard to race, color, religion, national origin, physical or mental handicap, age, sex, and ancestry, except when one of these criteria is a bona fide qualification for the occupation involved. It will also be regarded as a violation of equal employment opportunity values to use hiring criteria which set up barriers to employment or promotion for qualified persons without a strict foundation in occupational necessity.

The employer shall take all reasonable steps to insure the elimination of conduct that results in the harassment of any employee because of race, color, religion, national origin, physical or mental handicap, age, sex or ancestry.

The employer's full commitment to the principles of equal employment opportunity should be contained in the policy statement as well as an elaboration of all essential procedures related to the equal opportunity policy.

The employer's Civil Rights or Equal Opportunity Specialists and immediate staff should be named in the policy statement.

The statement must also pledge that all conversations and materials submitted by an employee in the informal grievance process, as well as that employee's identity, shall remain confidential and will not be disclosed to management except by the permission of the complaining party.

The highest ranking official shall sign the policy statement and date it appropriately.

##### B. ASSIGNMENT OF RESPONSIBILITY

The employer must select qualified staff persons of the facility to be appointed Civil Rights or Equal Opportunity Specialist of the employer's Affirmative Action Program. It will be the Civil Rights/Equal Opportunity Specialist's responsibility, among other things, to assist in the identification and solution of problems. The employer must give the Civil Rights/Equal Opportunity Specialist the necessary top management support and staffing to fulfill his or her job duties.

##### C. ESTABLISHMENT OF PROCEDURE FOR DISSEMINATING POLICY

A policy of Affirmative Action is considered to be of little value unless it goes beyond the words on a piece of paper and is put into effect. The Civil Rights/Equal Opportunity Specialist is responsible for establishing procedures for disseminating the agency's Affirmative Action Program both within the facility (internally) and outside the facility (externally).



CHAPTER 28\*  
Human Rights

Art.  
1. Human Rights, 28-1-1 to 28-1-14.

ARTICLE 1  
Human Rights

Section	Short title
28-1-1	Definitions
28-1-2	Commission on human rights
28-1-3	Powers and duties
28-1-4	Procedures for adopting regulations
28-1-5	Validity of regulation, judicial review
28-1-6	Unlawful discriminatory practice
28-1-7	Exemptions
28-1-8	Grievance procedure
28-1-9	Hearing procedures
28-1-10	Enforcement
28-1-11	Appeal
28-1-12	Posting of law and information
28-1-13	
28-1-14	

28-1-1. Short title.  
This act [28-1-1 to 28-1-7, 28-1-9 to 28-1-14 NMSA 1978] may be cited as the "Human Rights Act."

28-1-2. Definitions. — As used in the Human Rights Act:

- A. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustee, receiver or the state and all of its political subdivisions;
- B. "employer" means any person employing four or more persons and any person acting for an employer;
- C. "commission" means the human rights commission;
- D. "employee" means any person in the employ of an employer or an applicant for employment.

\*Chapter 28, Article 1 is reprinted from New Mexico Statutes Annotated 1978, with the exception of the history and annotations following each section. Because of the lengthiness of this annotated material, it has been omitted from this document to save space and cut costs.

STATE OF NEW MEXICO  
HUMAN RIGHTS ACT



New Mexico  
HUMAN RIGHTS COMMISSION  
930 Baca Street  
Santa Fe, New Mexico 87501  
Telephone: (505) 827-6420

Amended April 6, 1983  
Laws of 1983 Chapter 241

- H. The public hearing shall be in Santa Fe, and notice of the subject, time, and place of the meeting, the manner in which interested persons may present their views and the method by which copies of the proposed rule, regulation or amendment may be obtained shall be published in each county at least thirty days prior to the hearing date in a newspaper of general circulation, and
- (2) mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of the hearing.
- C. The commission shall allow all interested persons a reasonable opportunity to submit arguments, and to examine witnesses testifying at the hearing.
- D. The commission may designate a hearing officer to take evidence at the hearing.
- E. Any person appearing or represented at the hearing shall be given written notice of the commission's action on the proposed rule, regulation, amendment or repeal.
- F. No rule, regulation, amendment or repeal shall become effective until thirty days after its filing.

#### 28-1-6. Validity of regulation; judicial review.

- A. Any person who is or may be affected by a regulation adopted by the commission may appeal to the court of appeals for further relief. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days after filing of the regulation.
- B. The procedure for perfecting an appeal to the court of appeals under this section consists of the timely filing of a notice of appeal with a copy attached of the regulation from which the appeal is taken. The appellant shall certify in his notice of appeal that arrangements have been made with the commission for preparation of a sufficient number of transcripts of the record of the hearing on which the appeal depends to support his appeal to the court, at the expense of the appellant, including three copies which he shall furnish to the commission.
- C. Upon appeal, the court of appeals shall set aside the regulation only if found to be
- (1) arbitrary, capricious or an abuse of discretion,
  - (2) not supported by a preponderance of evidence in the record, or
  - (3) otherwise not in accordance with law.

#### 28-1-7. Unlawful discriminatory practice.—It is an unlawful discriminatory practice for

- A. an employer, unless based on a bona fide occupational qualification, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex or physical or mental handicap; provided, however, that 29 U.S.C. Section 611(c)(1) and (2) shall apply to discrimination based on age;
- B. a labor organization to exclude an individual or to expel or otherwise discriminate against any of its members or against any employer or employee because of race, religion, color, national origin, ancestry, sex or physical or mental handicap;
- C. any employer, labor organization or joint apprenticeship committee to refuse to admit or employ any individual in any program established to provide an apprenticeship or other training or retaining because of race, religion, color, national origin, ancestry, sex or physical or mental handicap;
- D. any person, employer, employee, union agency or labor organization to print or circulate or cause to be printed or circulated any statement, advertisement or publication, to use any form of application for employment or membership or to make any inquiry regarding prospective membership or employment which expresses, directly or indirectly, any limitation, specification or discrimination as to race, color, religion, national origin, ancestry, sex or physical or mental handicap unless based on a bona fide occupational qualification.

- E. "labor organization" means any organization which exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;
- F. "employment agency" means any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit or refer employees;
- G. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place of establishment which is by its nature and use distinctly private;
- H. "housing accommodation" means any building or portion of a building which is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual;
- I. "real property" means lands, leaseholds or commercial or industrial buildings, whether constructed or to be constructed, offered for sale or rent, and any land rented or leased for the use, parking or storage of house trailers;
- J. "unlawful discriminatory practices" means those unlawful practices and acts specified in Section 28-1-7 NMSA 1978;
- K. "physical or mental handicap" means a physical or mental impairment that substantially limits one or more of an individual's major life activities. An individual is also considered to be physically or mentally handicapped if he has a record of a physical or mental handicap or is regarded as having a physical or mental handicap; and
- L. "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;
- M. "applicant for employment" means a person applying for a position as an employee.

#### 28-1-8. Commission on human rights.

- A. There is created the "human rights commission" consisting of seven members appointed by the governor with the advice and consent of the senate. Not more than four of the members shall be of the same political party. Not more than one member may be appointed from any one county. The governor shall designate a member to serve as chairman. The commission shall designate one of its members as vice-chairman to preside in the absence or incapacity of the chairman.
- B. The term of office of each member of the commission is for four years, however, of the commissioners first appointed, one shall be appointed for a term ending December 31, 1969, one for a term ending December 31, 1970, one for a term ending December 31, 1971 and two for terms ending December 31, 1972; provided, the two additional members added pursuant to this 1975 amendment shall be initially appointed for staggered terms of two and three years respectively so that one term ends on December 31, 1977 and one ends on December 31, 1978.
- C. Any member chosen to fill a vacancy occurring otherwise than by expiration of term, shall be appointed for the unexpired term of the member whom he is to succeed. Four members of the commission constitute a quorum to conduct business. Vacancies on the commission shall not impair the right of the remaining members to exercise the powers of the commission.
- D. Each member of the commission shall be reimbursed, as provided in the Per Diem and Mileage Act (HO-8-1 to HO-8-7 NMSA 1978), during the performance of official duties and shall receive no other compensation, perquisite or allowance.
- E. The commission shall employ a full time executive director and such staff as necessary to carry out the provisions of the Human Rights Act (28-1-1 to 28-1-7, 28-1-9 to

- F. an employment agency to refuse to list and properly classify for employment or refer an individual for employment in a known available job, but which the individual is otherwise qualified, because of race, religion, color, national origin, ancestry, sex or physical or mental handicap unless based on a bona fide occupational qualification, or to comply with a request from an employer for referral of applicants for employment if the request indicates either direct or indirect that the employer discriminates in employment on the basis of race, religion, color, national origin, ancestry, sex or physical or mental handicap unless based on a bona fide occupational qualification;

- F. any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any individual because of race, religion, color, national origin, ancestry, sex or physical or mental handicap; provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation;

- G. any person to
- (1) refuse to sell, rent, assign, lease or sublease or offer for sale, rental, lease, assignment or sublease any housing accommodation or real property to any individual or to refuse to negotiate for the sale, rental, lease, assignment or sublease of any housing accommodation or real property to any individual because of race, religion, color, national origin, ancestry, sex or physical or mental handicap; provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation; or

- (2) discriminate against any individual in the terms, conditions or privileges of the sale, rental, assignment, lease or sublease of any housing accommodation or real property or in the provision of facilities or services in connection therewith because of the race, religion, color, national origin, ancestry, sex or physical or mental handicap; provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation; or
- (3) print, circulate, display or mail or cause to be printed, circulated, displayed or mailed any statement, advertisement, publication or sign or use any form of application for the purchase, rental, lease, assignment or sublease of any housing accommodation or real property, or to make any record or inquiry regarding the prospective purchase, rental, lease, assignment or sublease of any housing accommodation or real property, which expresses any preference, limitation or discrimination as to race, religion, color, national origin, ancestry, sex or physical or mental handicap; provided that the physical or mental handicap is unrelated to an individual's ability to acquire or rent and maintain particular real property or housing accommodation;

H. any person to whom application is made either for financial assistance for the acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation or real property or for any type of consumer credit including financial assistance for the acquisition of any consumer good, as defined by Section 55-9-109 NMSA 1978, to

- (1) consider the race, religion, color, national origin, ancestry, sex or physical or mental handicap of any individual in the granting, withholding, extending, modifying or renewing or in the fixing of the rates, terms, conditions or provisions of any financial assistance or in the extension of services in connection with the request for financial assistance; or

- (2) use any form of application for financial assistance or to make any record or inquiry in connection with applications for financial assistance which expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, national origin, ancestry, sex or physical or mental handicap;

I. any person or employer to

- (1) aid, abet, incite, compel or coerce the doing of any unlawful discriminatory practice or to attempt to do so;

28-1-14 NMSA 1978. The appointment and compensation of legal counsel not on the commission staff shall be approved by the attorney general.

#### 28-1-4. Powers and duties.

The commission may

- A. adopt, promulgate, amend and repeal rules and regulations to eliminate discrimination in employment, public accommodations or the acquisition of housing accommodations and real property;

- B. receive, investigate and issue orders, including cease and desist orders, concerning complaints alleging an unlawful discriminatory practice;

- C. seek to eliminate discrimination through conciliation and persuasion by voluntary conferences with interested parties;

- D. apply to a district court in the county where the violating party resides for specific performance of any conciliation agreement or for enforcement of any order issued by the commission;

- E. hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, order depositions and require the production for examination of any books, records, correspondence, documents and other evidence relating to any matter under investigation or in question before the commission. Contumacy or refusal to obey a subpoena issued pursuant to this section shall constitute contempt punishable by the district court of the judicial district in which the witness may be found. No individual shall be excused from attending and testifying or from producing evidence in obedience to a subpoena issued pursuant to this section on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or a forfeiture. However, no individual shall be prosecuted or subjected to any penalty or forfeiture concerning any matter for which he is compelled to testify or give evidence after having claimed his right against self-incrimination. Nevertheless, the individual so testifying shall not be exempt from prosecution and punishment for perjury committed while testifying;

- F. endeavor to eliminate prejudice and to further good will. The commission in cooperation with the state department and local boards of education shall encourage an educational program for all residents of the state, calculated to eliminate prejudice, its harmful effects and its incompatibility with principles of fair play, equality and justice;

- G. encourage voluntary advisory groups to study problems of discrimination in all fields, to foster through community efforts, good will and cooperation in this state, and to make recommendations to the commission for the development of policies and procedures which the commission may recommend to appropriate state agencies;

- H. seek and elicit the cooperation and contributions and grants of individuals and foundations, private, charitable, religious, labor, civic and benevolent organizations, and the federal government for the purposes of this section;

- I. issue publications and release the results of investigation and research which in the commission's judgment will tend to promote good will and prevent or eliminate discrimination; and

- J. submit annually a written report of all its activities and recommendations to the governor and the legislature.

#### 28-1-5. Procedures for adopting regulations.

- A. No rule or regulation of general application may be adopted, amended or repealed without a public hearing before the commission.

D. The commission shall not be bound by the formal rules of evidence governing courts of law or equity but shall permit reasonable direct examination and cross examination and the submission of facts. Testimony at the hearing shall be taken under oath and recorded by tape or otherwise. Upon the request of any party, testimony shall be transcribed provided that all costs of transcribing shall be paid by the party so requesting. Each commissioner may administer oaths.

E. If the commission finds from the evidence that the respondent has engaged in a discriminatory practice, it shall make written findings of fact, conclusions of law, and its decision based upon the findings of fact and conclusions of law. Within five days after any order is rendered by the commission following a hearing, the commission shall serve upon each party of record and its attorney, if any, a written copy of the order by certified mail to the party's address of record. All parties shall be deemed to have been served on the tenth day following the mailing. As part of its order, the commission may require the respondent to pay actual damages to the complainant and to pay reasonable attorney's fees, if the complainant was represented by private counsel, and to take such affirmative action as the commission considers necessary, including a requirement for reports of the manner of compliance.

F. If the commission finds from the evidence that the respondent has not engaged in a discriminatory practice, it shall make written findings of fact and serve the complainant and respondent with a copy of the findings of fact and with an order dismissing the complaint.

#### 28-1-12. Enforcement.

If a respondent is not complying with an order of the commission, the attorney general or district attorney, at the request of the commission, shall secure enforcement of the commission's order by a district court. Such proceeding shall be initiated by the filing of a petition in the district court where the respondent is doing business or the alleged discriminatory practice occurred. A copy of the petition shall be served on the respondent personally or by registered mail, return receipt requested. The court may make and enter upon the proceedings an order to decree enforcement of the order of the commission.

#### 28-1-13. Appeal.

A. Any person aggrieved by an order of the commission may obtain a final decree in the district court of the county where the discriminatory practice occurred or where the respondent does business by filing a notice of appeal within thirty days from the day of service of the commission's order. A copy of the notice of appeal shall be served personally or by certified mail, return receipt requested, at their last known address on all parties who appeared before the commission and shall also be served at the commission office in Santa Fe. No order of the commission shall be superseded or stayed during the appeal unless the district court so directs after notice to the commission and a hearing.

B. If testimony at the hearing was transcribed, the commission shall, upon receipt of the notice of appeal, file so much of the transcript of the record as the parties requesting the transcript designate as necessary for the appeal with the district court.

C. Upon appeal, either party may request a jury. The jurisdiction of the district court is exclusive and its judgment is final, subject to further appeal to the supreme court.

D. In any action or proceeding under this section if the complainant prevails, the court in its discretion may allow actual damages and reasonable attorney's fees, and the state shall be liable the same as a private person.

#### 28-1-14. Posting of law and information.

Every person, except an individual selling houses, shall keep posted in a conspicuous place on his premises notices prepared by the commission, which shall set forth excerpts of the Human Rights Act [28-1-1 to 28-1-7, 28-1-9 to 28-1-14 NMISA 1978] and other relevant information as determined by the commission.

(2) engage in any form of threats, reprisal or discrimination against any person who has opposed any unlawful discriminatory practice or has filed a complaint, testified or participated in any proceeding under the Human Rights Act, or

(3) willfully obstruct or prevent any person from complying with the provisions of the Human Rights Act or to resist, prevent, impede or interfere with the commission or any of its members, staff or representatives in the performance of their duties under the Human Rights Act, or

J. any employer to refuse or fail to accommodate to an individual's physical or mental handicap unless such accommodation is unreasonable or an undue hardship.

#### 28-1-8. Certification of pre-existing disability.

Section 28-1-8 NMISA, 1978 (being Laws 1973, Chapter 155, Section 3) is repealed.

#### 28-1-9. Exemptions.

Nothing contained in the Human Rights Act [28-1-1 to 28-1-7, 28-1-9 to 28-1-14 NMISA 1978] shall

A. apply to any single family dwelling sold, leased, subleased or rented by owner without the making of any notice, statement or advertisement with respect to the sale, lease, sublease or rental of a dwelling unit that indicates any preference, limitation or discrimination based on race, color, religion, national origin, ancestry, or sex. This exemption is subject to these further reservations:

(1) to qualify for the exemption, the seller must not be an owner of or own or have reserved any interest in more than three single family dwellings; and

(2) if the seller doesn't presently live in the dwelling or he was not the most recent occupant, then the exemption granted in this section will only apply to one sale in twenty-four months.

B. bar any religious or denominational institution or organization which is operated or supervised or controlled by, or is operated in connection with a religious or denominational organization (from limiting admission to or giving preference to persons of the same religion or denomination, or from making selections of buyers, lessees or tenants as are calculated by the organization to promote the religious or denominational principles for which it is established or maintained unless membership in the religious or denominational organization is restricted on account of race, color, national origin or ancestry;

C. apply to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence;

D. apply to public rest rooms, public showers, public dressing facilities or sleeping quarters in public institutions, where the preference or limitation is based on sex; and

E. prevent the mandatory retirement of an employee upon reaching the age of sixty-five years or older, if the employer is operating under a retirement plan which meets the requirements of Public Law 93-406, the Employee Retirement Income Security Act of 1974.

#### 28-1-10. Grievance procedure.

A. Any person claiming to be aggrieved by an unlawful discriminatory practice, and any member of the commission who has reason to believe that discrimination has occurred, may file with the commission a written complaint which shall state the name and address of the per-

son alleged to have engaged in the discriminatory practice, all information relating to the discriminatory practice and any other information that may be required by the commission. All complaints must be filed with the commission within one hundred eighty days after the alleged act was committed.

B. The executive director of the commission shall advise the respondent that a complaint has been filed against him and shall furnish him with a copy of the complaint. The executive director and the commission staff shall promptly investigate the alleged act. If the executive director determines that the complaint lacks probable cause, he shall dismiss the complaint and notify the complainant and respondent of the dismissal. The complainant shall be dismissed subject to appeal as in the case of other orders of the commission.

C. If the executive director determines that probable cause exists for the complaint, he shall attempt to achieve a satisfactory adjustment of the complaint through persuasion and conciliation. The executive director and staff shall neither disclose what has transpired during the attempted conciliation nor divulge information obtained during any hearing before the commission or a commissioner prior to final action relating to the complaint. Any officer or employee of the commission who makes public in any manner whatever any information in violation of this subsection is guilty of a misdemeanor and upon conviction shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year.

D. If conciliation fails or if, in the opinion of the executive director, informal conference cannot result in conciliation, the commission shall issue a written complaint in its own name against the respondent. The complaint shall set forth the alleged discriminatory practice, the commission's regulation or the section of the Human Rights Act alleged to have been violated and the relief requested. The complaint shall require the respondent to answer the allegations of the complaint at a hearing before the commission and shall specify the date, time and place of the hearing. The hearing date shall not be more than fifteen nor less than ten days after service of the complaint. The complainant shall be served on the respondent personally or by registered mail, return receipt requested. The hearing shall be held in the county where the respondent is doing business or the alleged discriminatory practice occurred.

E. Upon the commission's petition, the district court of the county where the respondent is doing business or the alleged discriminatory practice occurred may grant injunctive relief pending hearing by the commission or pending judicial review of an order of the commission so as to preserve the status quo or to ensure that the commission's order as issued will be effective. The commission shall not be required to post a bond.

#### 28-1-11. Hearing Procedures.

A. The respondent to a complaint made pursuant to Section 28-1-10 NMISA 1978 may file a written answer to the complaint, appear at the hearing, give testimony and be represented by counsel and may obtain from the commission subpoena for any person or for the production of any evidence pertinent to the proceeding. The complainant must be present at the hearing and may be represented by counsel. Each party shall have the right to amend his complaint or answer.

B. A panel of three members of the commission designated by the chairman shall sit, and a decision agreed upon by two members of the panel shall be the decision of the commission. However, no commissioner who has filed a complaint may sit on the panel hearing his complaint.

C. A member of the commission staff, the attorney general or special counsel shall present to the commission the case supporting the complaint. No evidence concerning prior attempts at conciliation shall be received. The executive director of the commission shall not participate in the hearing, except as a witness.



STATE OF NEBRASKA  
EQUAL OPPORTUNITY COMMISSION

ROBERT KERREY  
Governor



Lawrence R. Myers  
Executive Director

Mr. Benjamin Schatz  
National Gay Rights Advocates  
54 Castro Street  
San Francisco, CA 94114

June 3, 1986

Dear Mr. Schatz:

The Nebraska Equal Opportunity Commission is in receipt of your communication dated May 30, 1986 relative to the subject of AIDS and their relationship to disability discrimination under the Nebraska State Law.

The Nebraska Legislature has not mandated or past legislation indicating that AIDS is to be covered under the Nebraska Fair Employment Practice Act. The Nebraska Fair Employment Practice Act does prohibit discrimination because of ones disability. However, Section 48-1102(8) gives some examples of disability discrimination and in those areas that are not mentioned, the law states that a disability "shall also mean the physical or mental condition of a person which constitutes a substantial handicap as determined by a physician that is unrelated to such persons ability to engage in a particular occupation." Therefore, it is this writers conclusion that if an individual files a charge of alleged disability discrimination and as the basis state that AIDS is the disability, then he/she will have to supply the Commission with a statement from a physician stating that the person has a substantial handicap and then the Commission will do an investigation to see if it is unrelated to the persons ability to engage in a particular job or occupation.

To date the Commission has not had to face the problem of someone filing a complaint of alleged disability discrimination because he/she has AIDS. The Commission approaches each case on an individual basis and therefore this letter should only be construed as an opinion of this author and not that, necessarily of the State Government nor the entire Commission. I hope that this communication has answered your concerns. If I can be of further assistance, please feel free to contact the undersigned.

On behalf of the Commission,

*L. R. Myers*  
Lawrence R. Myers  
Executive Director

LRM/jme

REPLY TO

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Nebraska

Chairperson  
JOSEPH X. YAFFE  
Vice-Chairperson  
DORIS M. LEADER  
Secretary  
ELIZABETH M. SCOTT  
Executive Director  
HOMER C. FLOYD



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION  
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July 15, 1986

Commissioners  
RITA CLARK  
CARL E. DENSON  
ALVIN E. ECHOLS, JR.  
BENJAMIN S. LOEWENSTEIN  
THOMAS L. MCGILL, JR.  
ROBERT JOHNSON SMITH  
JOHN P. WISNIEWSKI  
RAQUEL OTERO de YIENGST

Reply to:  
P O Box 3145  
Harrisburg, PA 17105-3145

Benjamin Schatz, Esquire  
Director, AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, CA 94114

Dear Mr. Schatz:

This is in response to your letter of July 10, 1986.

The Pennsylvania Human Relations Act provides protection against discrimination because of non-job-related handicap or disability. The Pennsylvania Human Relations Commission treats AIDS and AIDS-related complaints as it would any other handicap or disability complaint. Job-relatedness must, of course, be determined on a case-by-case basis.

Enclosed for your information are our Commission's Regulations regarding handicap/disability discrimination and a copy of a memorandum, "AIDS Background Information and Policy dated April 10, 1986.

Our Commission has received several complaints involving AIDS. We have also conducted an orientation session on AIDS for all staff, to deal with issues of jurisdiction, investigative procedures, and the syndrome itself.

Should you need additional information, please feel free to contact me at the above address or at (717) 783-8263.

Very truly yours,

*Louise Oncley*

Louise Oncley, Special Assistant  
to the Executive Director

LO:cf

Enclosure



Rec'd  
June 15

ED HERSCHLER  
GOVERNOR

Wyoming

# Department of Labor and Statistics

HERSCHLER BUILDING CHEYENNE, WYOMING 82002 (307) 777-7261

## TABLE OF CONTENTS

### CHAPTER V

RULES OF PRACTICE AND PROCEDURE  
BEFORE THE WYOMING FAIR EMPLOYMENT COMMISSION  
CONCERNING HANDICAP DISCRIMINATION COMPLAINTS  
FILED PURSUANT TO THE FAIR EMPLOYMENT  
PRACTICES ACT OF 1965 AS AMENDED

June 11, 1986

NGRA  
540 Castro Street  
San Francisco, CA 94114

Dear Mr. Schatz:

We are in receipt of your letter of May 30, 1986 concerning coverage of AIDS under the Wyoming Fair Employment Practices Act.

Enclosed is a copy of the handicap amendments to our State law and a copy of the rules adopted pursuant to the amendment. Based upon the law and the rules and regulations, this agency would give due consideration to anyone claiming handicap discrimination on the basis of having AIDS.

I hope this answers your inquiry. If you have any further questions, please contact me.

Sincerely,

*Charles A. Rando*

Charles A. Rando, Supervisor  
Labor Standards/Fair Employment

drp

#### Section No.

#### Subject

#### Page No.

1	Authority	1
2	Purpose	1
3	Definitions	1
4	Guidelines on Reasonable Accommodation	2

## CHAPTER V

### RULES OF PRACTICE AND PROCEDURE BEFORE THE WYOMING FAIR EMPLOYMENT COMMISSION CONCERNING HANDICAP DISCRIMINATION COMPLAINTS FILED PURSUANT TO THE FAIR EMPLOYMENT PRACTICES ACT OF 1965 AS AMENDED

Section 1. Authority. These rules of practice and procedure are promulgated as authorized by W.S. 27-9-101 to 27-9-108, and W.S. 16-3-101 to 16-3-115.

Section 2. Purpose. The purpose of these rules and regulations is to provide definitions and guidelines concerning handicap discrimination under the Wyoming Fair Employment Practices Act as amended by the Wyoming Legislature under Original House Bill No. 40 of the 1985 General Session.

#### Section 3. Definitions.

(a) "Handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such an impairment.

(b) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or any mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(c) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(d) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(e) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (b).

(f) "Qualified handicapped person" means, with respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

(g) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (a) of this section.

Section 4. Guidelines on Reasonable Accommodation. Reasonable accommodation. An employer shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its program. Reasonable accommodation may include:

(a) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(b) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(i) In determining whether an accommodation would impose an undue hardship on the operation of an employer's program, factors to be considered include:

(A) The overall size of the employer's program with respect to number of employees, number and type of facilities, and size of budget;

(B) The type of the employer's operation, including the composition and structure of the employer's workforce; and

(C) The nature and cost of the accommodation needed.

(ii) An employer may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(iii) Occupational training and retraining programs, including but not limited to guidance programs, apprentice training programs, on-the-job training programs and executive training programs, shall not be conducted in such a manner as to discriminate against persons with physical or mental disabilities.



(ORIGINAL SIGNED BY  
PRESIDENT AND SPEAKER)

SIGNED BY GOVERNOR

DATE: 2-8-85

CHAPTER NO: 5

ORIGINAL HOUSE  
BILL NO. 0040

ENROLLED ACT NO. 2, HOUSE OF REPRESENTATIVES

FORTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
1985 GENERAL SESSION

AN ACT to amend W.S. 27-9-105(a) and by creating a new subsection (d) relating to rights of handicapped persons; prohibiting discrimination in the employment of handicapped persons; providing a definition; and providing for an effective date.

Be it Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 27-9-105(a) and by creating a new subsection (d) is amended to read:

27-9-105. Discriminatory and unfair employment practices enumerated; limitations.

(a) It is a discriminatory or unfair employment practice:

(i) For an employer to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation or the terms, conditions or privileges of employment against a qualified handicapped person or any person otherwise qualified, because of age, sex, race, creed, color, national origin or ancestry;

(ii) For a person, an employment agency, a labor organization, or the employees or members thereof, to discriminate in matters of employment or membership against any person, otherwise qualified, because of age, sex, race, creed, color, national origin or ancestry, or a qualified handicapped person;

(iii) For an employer to reduce the wage of any employee to comply with this chapter.

(d) As used in this section "qualified handicapped person" means a handicapped person who is capable of performing a particular job, or who would be capable of performing a particular job with reasonable accommodation to his handicap.

HANDICAP

ORIGINAL HOUSE  
BILL NO. 0040

ENROLLED ACT NO. 2, HOUSE OF REPRESENTATIVES

FORTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
1985 GENERAL SESSION

Section 2. This act is effective May 23, 1985.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

(ORIGINAL SIGNED BY  
PRESIDENT AND SPEAKER)

SIGNED BY GOVERNOR

DATE: 2-8-85

CHAPTER NO: 5

quate. Generally, these charges fall into two categories: (1) the relief being sought was authorized under state law but was not granted, and (2) the relief being sought was not authorized under state law. It is the Commission's position that a prior state court decision on the issue of relief is entitled to preclusive effect under *Kremer* where the decision would be accorded preclusive effect on that issue under the law of that state.

Where the relief being sought by a charging party was authorized under state law, state rules of res judicata may bar a subsequent action seeking different or additional relief because the issue of relief either was or could have been raised in the prior state court action.<sup>10</sup> Thus, where state law authorizes the particular form of relief being sought by a charging party, the Commission will look to that state's law to determine whether preclusion applies. If state law precludes a subsequent action on the issue of relief, the charge will be dismissed and a notice of right to sue issued. If state law does not preclude such an action, the Commission

will continue to process the charge. However, where a charging party seeks only attorney fees, the Commission will limit its role to issuing a notice of right to sue.

Where state law does not authorize the particular form of relief being sought, a charging party may bring a subsequent federal action to recover such relief. *New York Gaslight Club, Inc. v. Carey* [23 EPD ¶ 30,955], 447 U.S. 54 (1980).<sup>11</sup> Such an action is not precluded under *Kremer*, since the issue of relief could not have been raised in state court because it was not authorized. Therefore, the Commission will continue to process charges where state law does not provide for the form of relief being sought. However, as stated above, where a charging party seeks only attorney fees, the Commission will limit its role to issuing a notice of right to sue.

Questions concerning the application of this policy statement to the facts of a particular charge should be directed to the Regional Attorney for the Commission office in which the charge was filed.

#### ¶ 5020) Employment Discrimination Based on AIDS Prohibited, Oregon Commissioner States

Oregon Bureau of Labor and Industries, Commissioner Mary Roberts' Opinion Letter to Attorney James M. Campbell, March 13, 1986.

#### Oregon—FEP Act and Civil Rights Division Rules

**AIDS Discrimination—Mental or Physical Handicap—Rules and Regulations.**—Oregon's Civil Rights Division has interpreted the statutory ban on job bias because of physical or mental handicap to include AIDS. As a result, it has not promulgated any general announcements regarding AIDS following its promulgation of regulations on physical or mental disabilities.

Back reference.—¶ 26,999.44.

This will acknowledge and thank you for the informative letter in caption.

Your view on the problems in employment associated with HTLV-III infections,

generically referred to as "AIDS", closely mirrors the current policy of the Civil Rights Division of the Oregon Bureau of Labor and Industries. We have adopted the rationale, as early as mid-1985, that adverse

<sup>10</sup> *Trujillo v. County of Santa Clara* [37 EPD ¶ 35,424], 766 F.2d 1368 (9th Cir. 1985) [opinion withdrawn and replaced, CA-9 1985, 39 EPD ¶ 35,871, 775 F.2d 1359] (res judicata applies where the state court was authorized to award attorney fees but declined to do so). Cf. *Patzner v. Board of Regents* [37 EPD ¶ 35,314], 763 F.2d 851 (7th Cir. 1985) (a federal court action for supplemental relief in the form of back pay would be allowed under state law as an exception to state rules of res judicata, even where back pay was authorized but not awarded in state court).

<sup>11</sup> In *Carey*, the Supreme Court considered the role that the states play under Title VII and concluded that:

"It is clear from this scheme of interrelated and complementary state and federal enforcement that Congress viewed proceedings before the EEOC and in federal court as supplements to available state remedies for employment discrimination. Initial resort to state and local remedies is mandated, and recourse to the federal forums is appropriate only when the State does not provide prompt or complete relief."  
447 U.S. at 65.

employment decisions by an employer based on the mere suggestion of infection with the virus would allow the offended employee to file with us under ORS 659.425 [Discrimination against the physically or mentally handicapped]. This opinion is based on Oregon Administrative Rules 839-06-200 to 839-06-255 [on the physically and mentally handicapped] which outlines the Division's interpretation of the statute. It is also based on available medical opinion respecting the risk and manner of transmission and the degree of disablement involved.

\*\*\*\*\*

The [previously mentioned] rules have been in effect since January, 1984; to date the Division has not promulgated any gen-

eral announcement regarding AIDS. The Division has consistently answered inquiries from the employer community as well as from potential complainants to the effect that an adverse employment decision based on AIDS, ARC, or a sero-positive finding known to the employer would be a violation. Such a decision based on a perception that the individual employee or applicant is a member of a high risk group, and is therefore "treated by an employer . . . as having an impairment" (ORS 659.400(3)(c)(C) defining ORS 659.425(1)(i)) would also be a violation. We believe that no special rules regarding AIDS are necessary given the statute and existing rules. Thank you again for your interest.

#### ¶ 5021) Tree Farmers May Hire Illegal Aliens

Louisiana Attorney General's Opinion No. 85-599, August 8, 1985.

#### Louisiana—Employment of Aliens

**Tree Farmers—Employment of Illegal Aliens—"Agriculture" Exemption.**—Tree farmers engaged in planting trees which, when mature, would be used for logging purposes are exempt from the statutory prohibition against employing illegal aliens. The exemption from the prohibition for aliens employed in the production of raw agricultural crops or horticultural products includes the activity of raising trees.

Back reference.—¶ 23,549.

SUSSEX OFFICE  
546 S. BEDFORD STREET  
GEORGETOWN, DELAWARE 19947  
TELEPHONE (302) 856-5331



KENT OFFICE  
805 RIVER ROAD  
DOVER, DELAWARE 19901  
TELEPHONE (302) 736-4567

Delaware

STATE OF DELAWARE  
DEPARTMENT OF COMMUNITY AFFAIRS  
DIVISION OF HUMAN RELATIONS  
820 N. FRENCH STREET  
WILMINGTON, DELAWARE 19801  
TELEPHONE (302) 571-3485

OFFICE OF THE  
DIRECTOR

August 20, 1986

Ms. Carol Moore  
MGR  
540 Castro Street  
San Francisco, CA 94114

Dear Ms. Moore:

Relative to our phone conversation on the position of the Delaware Human Relations Commission regarding AIDS cases, I respectfully submit the following information.

The Delaware Equal Rights to Housing Law and the Public Accommodations Law prohibits discrimination based on race, age, marital status, creed, color, sex, handicap or national origin. The law further defines "handicap" as a physical or mental impairment which substantially limits one or more of such person's major life activities; a person must have a record of having such an impairment or be regarded as having such an impairment.

With the aforementioned definition in mind we sought legal guidance from the Delaware Attorney General's Office regarding AIDS as a handicap in dealing with the two laws above. We were informed that the specific facts of a certain condition would render whether a person would fall within the criteria set forth in the law, therefore that factual question should be best left to a case by case determination. That is, the determination of whether the impairment of life activities in fact, or as perceived meet the definition of handicap under our statute.

The Commission is guided by the legal opinion of the Attorney General's Office in the efforts of equal rights to housing and public accommodations.

Ms. Carol Moore  
August 20, 1986  
page two

The Commission has only one handicap case where AIDS condition may be used as a factor. This case is now scheduled for hearing next month.

I hope that this information will be of value to you.

Sincerely,

Andrew J. Turner, Jr., Director  
Division of Human Relations

AJT/nlg



## EMPLOYMENT AND INSURANCE ISSUES FOR THE CANCER PATIENT

ROBERT J. McKENNA, M.D.  
Clinical Professor of Surgery  
USC School of Medicine  
Los Angeles, California

Will I be able to work after cancer? Will I be able to have or afford health and other insurance after cancer? These questions are faced by more than 400,000 Americans each year. For some, these questions may arise many times over the years.

To work is to survive, be independent and self-sufficient; to earn is a measure of personal adequacy and worth. A job usually means access to health care through group insurance benefits. Both employment and health insurance are of major importance to most individuals living after a diagnosis of cancer.

There are over 5 million Americans living today who have a history of cancer; 60 percent of them were diagnosed more than 5 years ago and the majority can now be considered cured. More than 850,000 Americans are added to this group each year.<sup>1</sup>

### Who in the Work Force Gets Cancer?

The annual incidence of cancer in a study of over three-quarters of a million workers was 2.11 per thousand employees.<sup>2</sup> The cancer rate in the work force increases with age of the employees (see Table 1). The cancer rate for females is 2.57 and is greater than the cancer rate for males (1.67) until the seventh decade is reached (Table 1). In this study from the Bell Telephone System, 82 percent of the males who had cancer were over age forty and 77 percent of the females were over age forty. Cancer rates for the sixth decade were more than ten times the rate for the third decade.

### Socioeconomic Impact of Cancer

As a consequence of cancer, many psychosocial issues impact on both employee and employer, as well as on the family and on so-

Present address: Wilshire Oncology Medical Group, 201 S. Alvarado St., Ste. A, Los Angeles CA, 90057.

ciety. A variety of social attitudes and individual misconceptions surface at the time of the cancer diagnosis and may resurface years after.

Although no scientific evidence exists that cancer is contagious, fear that it might be is sometimes a concern of fellow employees, employers and even of friends and neighbors.

Cancer is always a life-threatening illness, and some individuals expect a fatal outcome even though the prognosis may be excellent; consequently, some workers will never attempt to return to work. Some employees may elect to take prolonged sick leave, permanent disability, early retirement and a pension when eligible. The employer may also discourage a return to work, expecting that frequent absences will be needed for future treatment, for persistent or recurrent cancer, or for complications of prior treatment.

The well-meaning employer may be self-serving when concerned about future health costs for the employee with a past history of cancer as well as the cost of other fringe benefits. Employers are sometimes concerned that Workman's Compensation Insurance will cost more if a recovered cancer patient is injured on the job. Some employers are unwilling to train a less-than-perfect individual for new duties, preferring instead to leave a former cancer patient stuck in his original job. Some

TABLE 1  
CANCER INCIDENCE  
IN THE WORK FORCE

Age (Years)	Age Specific rate for cancer per 1000 workers <sup>1</sup>	
	Male	Female
<20	0.3	0.3
20-29	0.5	0.7
30-39	0.7	1.8
40-49	1.9	4.1
50-59	4.9	7.1
60+	9.9	9.0

employers have concerns about productivity of the patient with cancer who is working, but such fears are unfounded. These and other attitudes and misconceptions compound the problems which many cancer victims face on entering or retaining their place in the work force. Educating both workers and employers should enlighten both about the hopeful side of cancer.

### Returning to Work After Cancer

The average length of sick leave due to cancer was 93.3 days for men and 108.3 days for women.<sup>2</sup> Job absence due to cancer,<sup>3</sup> while usually prolonged, is infrequent (14th for men and 15th for women) when compared with other illnesses for job absence of seven or more days.

Insurance benefits for continuation of income have become more generous in recent years. The duration of this income protection varies from company to company depending on length of service. Not all patients return to work. Cancer is the leading cause of death for women in the Bell Telephone series<sup>3</sup> and the second leading cause of death for men.

Most employees return to their jobs after cancer treatment; 78.8% of women and 70.6% of men were able to resume employment.<sup>2</sup> The sex difference is explained largely by the higher death rate of men (23.4%) compared to women (13.7%) (Table 2). This positive outcome of cancer treatment (return to work) reflects the progress which has been made in cancer control through improved treatment, early diagnosis and even prevention; e.g., precancerous lesions such as are found in cervical carcinoma in situ are 100% curable.

It is very reassuring for an employee to know that a job is waiting when he or she is able to return to work. Most cancer patients

TABLE 2  
EMPLOYMENT AFTER CANCER  
TREATMENT<sup>2</sup>

	Male	Female
Return to work	70.6%	78.8%
Benefits exhausted		
Put on pension disability	6.0%	7.5%
Died before return to work	23.4%	13.7%

are anxious to return but there are exceptions; some have fears for their future, and some fear rejection by fellow employees and their employer. Encouragement by the oncologist, and professional counseling prior to return to work, are far from routine but could be of help in coping with anticipated or actual attitudinal reactions in the workplace.

The location of the employee's cancer may determine ability to return to work, since it appears some cancer sites may be associated with no physical or psychological disabilities. Stone's report on the experience at the Bell Telephone Company showed a return to work for several cancer sites: genital tract-88%; breast-85%; gastrointestinal tract-68%; and lung-48%.<sup>3</sup>

All patients should be encouraged to work after cancer treatment. The patient with limited life expectancy as a result of the cancer should have the hope of returning either to full or part-time work if work-able. The cancer patient with disability deserves maximum rehabilitation and vocational retraining; examples would include the patient with a laryngectomy<sup>4</sup> or an amputation.<sup>5</sup>

### Greenleigh Study

Most studies about returning to work after cancer have been undertaken either in one industry or in one medical center concerning one cancer site. The California Division of the American Cancer Society commissioned a study<sup>6</sup> of 810 patients randomly selected throughout the state. Patients aged 20 to 70 were interviewed 6 to 24 months after their cancer diagnosis, a time delay which eliminated some of the more lethal cancer sites such as leukemia and lung cancer, where death frequently intervened before the interview.

The more a patient earned at the time of cancer diagnosis, the more likely the patient would be working after treatment. Only 3% of those earning more than \$25,000/year were not working after cancer, in contrast to 7% of the \$15,000-25,000 group, and 11% of the less than \$7500 group (Table 3). Some low-income individuals have more physically demanding jobs and as a result, some might be expected to give up their job due to the effects of cancer.

Age proved to be another significant varia-

ble in employment after cancer. More job loss was noted in ages 46-64 (years) when compared with younger patients (Table 4).

Significant variations in productive employment following a diagnosis of cancer were observed for different cancer sites (Table 5). Patients with breast and uterine cancer were the least affected, while patients with leukemia and lung cancer were the most affected. Some employees were currently working part-time, some were retired and others were on disability. The net effect was a loss of job income for 1/7th of those with prostate cancer, 1/5th of those with uterine and breast cancer, 1/4th of those with colo-rectal cancer, 1/3rd of those with oral cancer and half of those with lung cancer, leukemia, and lymphoma.

#### Applicants for New Employment After Cancer

Some employers with little medical justification require an arbitrary interval between the date of cancer treatment and job application to be sure the cancer is cured. This interval might vary from two to ten or more years. Such personnel policies seem arbitrary with no relation to stage or extent of cancer and with no relation to the individual prognosis. All such concepts are both illegal and inhumane.

The Metropolitan Life Insurance Company<sup>7</sup> has been selectively employing workable cancer patients since 1957. Between 1957 and 1971, 74 applicants were hired with a can-

TABLE 3  
CANCER EMPLOYMENT VS. INCOME\*

ANNUAL INCOME	Percent Employed		New Unemployed
	At Cancer Diagnosis	2 1/2 Yrs After Cancer	
25,000+	65.7	62.3	3.4
15,000-24,999	63.5	56.1	7.4
7,500-14,999	54.1	43.0	11.1
Under 7,500	35.2	17.6	17.6

TABLE 4  
CHANGE IN EMPLOYMENT AFTER CANCER BY AGE\*

Age	EMPLOYED				
	Full-Time	Part-Time	Disability	Retired	Homemaker
45 or <	+1%	+4%	+2%	—	-2%
46-64	-15%	+2%	+7%	+5%	+1%
65 & over	-11%	—	+1%	+11%	—

TABLE 5  
PERCENT CHANGE IN PRODUCTIVITY\* AFTER CANCER

Cancer	Employed		Disability	Retired	Homemaker
	Full-Time	Part-Time			
Prostate	-10	+4	+4	+4	—
Uterus	-8	+1	+2	+7	+1
Breast	-10	+1	+4	+5	—
Oral	-14	+5	+9	+14	—
Leukemia/ Lymphoma	-27	+3	+13	+10	+3
Lung	-26	-3	+13	+10	+3

cer history, a rate of 0.63/1000 new employees. Approximately the same number of applications with a cancer history were not hired during the same period.

Turnover rate, absenteeism and work performance by the group were comparable to a matched company population. Only 2.7% developed a cancer recurrence. Dr. Wheatley, Medical Director of the Metropolitan Life Insurance Company, concluded that selective hiring of patients who have been treated for cancer, in positions for which they are qualified, is a sound industrial practice. He states that to wait until one might be sure a patient is cured of cancer before hiring will create hardships and does not reflect modern successful outcomes of cancer therapy. Delays are especially difficult for young persons who have not established a vocational career. He advises a change in the attitude of oncologists and occupational physicians toward the hiring process of the workable cancer patient. He recommends that the oncologist candidly provide a job reference with a summary of cancer treatment, performance status and prognosis. It is unreasonable to demand that the cancer patient be "cured" before being eligible for employment.

Some employers still refuse to hire workable cancer patients using a variety of excuses or subterfuges. Such practice was routine before 1957 and today violates Federal Laws such as Title VII of the Civil Rights Act of 1964, the "Rehabilitation Act of 1973 (Sections 503 and 504), and the Vietnam Era Veterans Readjustment Act of 1974. In addition, more than 35 states have Affirmative Action Fair Employment Acts to prevent employment discrimination of the cancer patient. Most legal definitions of job discrimination assume that the recovered cancer patient is disabled — and as a group, they require legal protection to insure equal opportunity in employment. Most recovered cancer patients do not have limitations of physical and mental capacity, as do many other disabled persons. The workable cancer patient may be able to perform the job, but simply may be unable to gain access to the job.

#### Employment Discrimination

In 1969, two of my cured cancer patients

were employed in the aerospace industry and were laid off due to a contract completion. They were offered new employment by other aerospace firms but were later rejected when their prior cancer history was revealed. This problem was reported to the California Division of the American Cancer Society and an Ad Hoc Committee was formed to review employment discrimination. In 1973, 44 case reports documented that employment problems did exist for cancer patients.<sup>8</sup> Three studies by Feldman<sup>9-11</sup> of employment problems of the White Collar Worker, the Blue Collar Worker, and the Child with cancer were funded by the American Cancer Society. Subsequently, the Greenleigh Study<sup>6</sup> confirmed the Feldman findings. The California Legislature amended the Fair Employment and Housing Act by the passage of the Siegler Bill (AB 1194) prohibiting employment discrimination against the cancer patient in California.

Work symbolizes adequacy, independence and control over one's affairs and is a means to meet needs and obligations. A quote from Jon, a 42-year-old bookkeeper with a colostomy,<sup>12</sup> summarizes this common feeling: "I received a death sentence twice, once when my doctor told me I have cancer, then when my boss asked me to quit because the cancer would upset my fellow workers. Except for my wife, that job was my whole world!"

Some still doubt that significant employment discrimination for a workable cancer patient exists.<sup>13,14</sup> Studies by Feldman,<sup>9-11</sup> Smith,<sup>15</sup> and Koocher,<sup>16</sup> have clearly documented its existence. Job rejection on the basis of a past history of cancer happens to 25% to 45% of workers, the higher figure applying to the blue collar worker and youth (Table 6).

TABLE 6  
EMPLOYMENT ISSUES FOR THE WORKER WITH A CANCER HEALTH HISTORY

STUDY	n	Job Rejection	Work-Related Problems
White Collar <sup>9</sup>	130	22%	54%
Blue Collar <sup>10</sup>	111	45%	84%
Youth <sup>11</sup>	83	45%	25% (Work) 51% (School)
Youth <sup>16</sup>	60	25%	—
NCT Study <sup>15</sup>	95	13.7%	—



Work-related discrimination may be classified into three categories:<sup>12</sup>

1. The most serious includes dismissal, demotion, discontinued health and/or life insurance, reassignment of hours or location of work, no salary increases as given other employees, etc.
2. Work problems arising from attitudes of co-workers; i.e., shunning, mimicry, overt hostility, etc.
3. Problems stemming from workers' own attitudes, anxieties, defensiveness, fearfulness about how they should be perceived by others which have led to avoidance or alienation by the co-workers. This could result in a hostile behavior by the patient to fend off anticipated actions by others and may result in dismissal.

Job discrimination is described by Barofsky<sup>17</sup> as the social death of the cancer patient. Competition is an everyday event in our country and happens daily to all of us in job selection, promotion, training, etc. Job discrimination occurs when the criteria of selection are inappropriate, e.g., age, sex, religion, marital status, or a cancer health history. Such job discrimination should be fought with vigor.

Should the employer be informed of a cancer history? It is legally wrong to falsify a job application, but it is extremely difficult to admit the truth when one knows it might have a negative impact. If, when, and under what circumstances a patient should tell the employer or the potential employer that he or she has had cancer in the past poses an ethical dilemma.

#### Legal Rights

Cancer patients have rarely taken advantage of their legal rights to win back a job when they have been laid off, or to try to gain access when they have been denied. Barofsky<sup>17</sup> reviewed the litigative literature in 1982 and found only 2 court cases concerning the rights of cancer patients; only 3 union contract arbitration cases which dealt with cancer patients; and only 1.3% of complaints filed from 1974 to 1978 under the Rehabilitation Act of 1973 involving cancer patients. It is probable that more litigation will occur in the future.

Perhaps discriminatory employment practices relative to the cancer patient might be eliminated through better cancer information for the employer.

Large companies should be the most altruistic and humanistic in hiring the recovered cancer patient; such applications might average 0.2% of job applicants. The Armed Forces and some governmental agencies are still using discriminatory employment practices, while there has been significant improvement since 1974 in industry.

Each job applicant should be considered individually and fairly on the basis of qualifications and physical ability. Many employers do not understand that cancer is many different illnesses requiring a wide range of treatment. *Most cancer patients are work-able.*

#### Cancer Caused by the Carcinogens in the Workplace

Wynder and Gori<sup>18</sup> interpret epidemiologic data to conclude that 4% of cancer in males and 2% of cancer in females is caused by occupational factors. Some of the most frequently used carcinogens include: aromatic amines, asbestos, benzene, cadmium, chromium, nickel, polycyclic hydrocarbons, ultraviolet light, vinyl chloride, and ionizing radiation. The Occupational Safety and Health Act (OSHA) of 1971 provides regulations in the workplace and mandates safety standards. Additive effects can occur — for example, asbestos workers who smoke tobacco have a 9-fold increase in lung cancer incidence when compared to asbestos workers who do not smoke. The control of carcinogens in the workplace will continue to interest both Labor<sup>19</sup> and Management and will mandate continuing change in the Workman's Compensation Act which began in 1911.

#### Economics of Cancer

In the United States in 1977, the direct costs of cancer were estimated to be \$9.1 billion; these include hospital and outpatient expenses, physician fees, nursing services, home care and drugs (Table 7). Cancer costs increase yearly with inflation, improved treatment modalities developed through research, and more effective palliation measures, with the

TABLE 7  
DIRECT COST OF CANCER CARE<sup>21</sup>

Hospital	56.6%
Physicians Services	16.3%
Nursing Home	3.2%
Drugs	1.5%
Nursing Services	1.3%
Research	8.2%
Other	12.9%

result that patients are treated over longer time intervals and enjoy a better quality of life.

Indirect cancer costs include the economic consequences of the disease other than those in which direct payment is involved; these are estimated to be four times the direct costs. The most important component of indirect costs is wages lost because of morbidity and mortality.

American industry spends at least \$4 billion yearly — and the government another \$400 million yearly—for sick leave, salary for temporary workers, permanent employee replacement, life insurance costs and lost future earnings as a result of cancer.

The four sites of breast, lung, colo-rectum and uterine cancer account for about half of all cancer in the United States. A major education and screening program in industry if started now would save American industry \$1 billion annually.<sup>20</sup>

#### INSURANCE

The U. S. insurance industry is truly a giant; its assets are \$700 billion, greater than our nation's top fifty corporations. The industry is exempt from federal trade and antitrust laws, and employs 1.8 million people, three times as many as the U. S. Postal Service.<sup>22</sup>

Americans buy nearly half of the insurance sold in the world. Insurance payback varies from 10¢ to 65¢ on the premium dollar. Blue Cross payback is 93¢ of the premium dollar.

Insurance is defined in the Insurance Code (Section 22) as a method whereby one undertakes to indemnify (protect) another against loss, damage, or liability arising from a contingent or unknown event. Insurance companies underwrite policies for individual applicants by considering specific information such as age, sex, past medical history, personal habits, etc.

Group insurance applicants are generally not individually underwritten, i.e., not subject to medical examination by employers, especially if the group consists of ten or more people. The insurance company is able to maintain its profit margin by adjusting the group's premium rate from year to year on the basis of benefits paid. It is therefore the employer who is most concerned about each employee's health risk, since the group premium will probably be affected. Health history thus represents a formidable barrier to obtaining both employment and affordable insurance for the individual with a cancer health history.

#### Health Insurance

The Health Insurance Institute estimates that 90% of Americans (excluding the military) have health insurance, some with multiple policies. Eighty percent of health coverage is provided by group insurance.<sup>23</sup> Most of the workforce have cancer coverage, usually paid for by the employer, or shared by the employee; health benefits may vary considerably from company to company. The Third National Cancer Survey showed that for patients under age 65, Blue Cross and private insurers were the source of payment in over 77% of cancer cases. For patients over 65, Medicare paid cancer expenses in nearly 88% of cases.

Individual health insurance underwriting is based on evidence of insurability, as is individual life insurance. Adequate health insurance coverage is often the difference between a financial catastrophe and economic peace of mind.

#### Life Insurance

In 1976 more than 150 million Americans held life insurance worth more than \$2.1 trillion.<sup>24</sup> Three percent of applicants were non-insurable. Five percent of applicants for life insurance were insured with a higher than normal premium (rated). Therefore 92 percent of applicants were insured at standard risk.

#### Insurance Coverage at Time of Cancer Diagnosis

More than 90% of employees were covered by health insurance at the time of cancer diag-



nosis (Table 8).<sup>6,10,12</sup> Most health coverage was group insurance and seemed superior to that of individual health policies.<sup>6</sup> In the California series,<sup>6</sup> 35.7% had more than one policy, 61.6% had one policy and only 2.7% were uninsured.

Coverage of hospital and medication costs for the cancer patient varied from 100% to nil.<sup>6</sup>

100% coverage	36.9%
> 50% coverage	54.0%
< 50% coverage	3.1%
little coverage	2.0%
no coverage	2.3%

Most health policies are of the guaranteed renewable type; maximum benefits may be used up as a result of illness. Some health insurance policies are not guaranteed renewable.

Life insurance is less common than health insurance at the time of cancer diagnosis, and varied from 66 to 80% (Table 8). In contrast to health insurance, most life insurance was of the individual policy type as follows.<sup>13</sup>

70% Whole Life
70% premium payable till death
30% premium payable to a specific age
17% Term (60% group)
13% Endowment

**TABLE 8**  
PERCENT WITH INSURANCE IN FORCE  
AT TIME OF CANCER DIAGNOSIS

	Mayo <sup>13</sup>	Feldman <sup>10</sup> Blue Collar	Greenleight <sup>6</sup>
Health	93.8	91.0	98
Life	80.0	66.0	N/A

#### Disability Payment

A total of 112 patients (11.9%) in the Mayo survey<sup>13</sup> (n=940) received some disability payment; 13 from more than one source:

Social Security	44%
Insurance	28%
Employer Plan	23%
Veterans Administration	3%
Union Welfare	1.6%

Disability is a condition that may be total or partial, permanent or temporary. These parameters are not well defined for the cancer patient. Total disability means termination of

employment and termination of benefits, often including health and life insurance.

#### Who is Without Health Insurance?

Some 26.5 million Americans (12.6%) have no health insurance. There are regional differences in coverage as follows:

West	16.2%
South	16.2%
Northeast	8.3%
North Central	9.3%

In the U.S. 11.7% of the white and 18.1% of the non-white population (ages 18-64) have no health coverage. The younger population is more often without health coverage than the older groups:

Age 18-24	21.9%
Age 25-54	12.1%
Age 55-64	11.2%

Before age 65 some without health coverage may be eligible for Medicaid/MediCal when an illness such as cancer occurs. At age 65 many Americans without health coverage become eligible for Medicare without concern for prior health history.

Six to twenty-one percent of patients with cancer had no health insurance at the time of diagnosis<sup>6,10,13</sup> (Table 9). Twenty to thirty-four percent of patients in the same studies had no life insurance at the time of cancer diagnosis (Table 9).

**TABLE 9**  
POPULATION WITHOUT INSURANCE

		No Insurance	
		Ages	Health Life
U.S.	ALL	12.6%	31.8%
Mayo <sup>13</sup>	19-64	6.2%	20%
Cancer Patients	Feldman <sup>10</sup>		
	Blue collar	25-50	9.0% 34%
	Greenleight <sup>6</sup>	20-70	20.9%

#### Insurance Changes After Cancer (Table 10)

The Greenleight study<sup>6</sup> reported that 24.2% had problems with health insurance after cancer. Five percent lost health insurance due to a loss of job or a change of job that was cancer-related. Two percent had insurance cancelled and 3.3% had benefits reduced, creating a strong negative impact on those so affected;

1.5% found that their insurance was no longer valid. Ten percent became eligible for either Medicaid or Medicare.

**TABLE 10**  
POTENTIAL CHANGE IN INSURANCE  
AFTER CANCER TREATMENT

Locked into present job to maintain insurance benefits
Existing Coverage
Cancellation
Reduced benefits
Increased premium
Cancer exclusion
New insurance application
Refusal
Cancer Exclusion
Higher Premium
Waiting period for coverage
Disability
Insurance loss
?Medicare/Medicaid eligibility
Retirement
Insurance loss
Job Loss
Insurance loss
New Employment
?Loss of fringe benefits
Financial Crisis
?Medicaid/Medi-Cal eligibility
Age 62-65
Medicare eligibility

The Mayo study<sup>13</sup> found fewer patient complaints about health insurance (17.5%) than in the Greenleight study; an insurance review committee<sup>13</sup> considered one-third to one-half of complaints to be insurance discrimination. Four percent lost their job and therefore their insurance; 1.2 percent had their health insurance cancelled and 0.6% had premium increases. The Mayo study<sup>13</sup> reported that 9.2% patients perceived problems with life insurance, 3% with employment and 0.5% with vocational rehabilitation (too few users or awareness of vocational rehabilitation to be significant).

Neither study<sup>6,13</sup> is detailed enough or was confirmed by insurance crosscheck to certify the true extent of the insurance problems; however, they point out that there are problems which deserve further study.

#### New Insurance After Cancer

One to two percent of the U. S. population now living are cured of cancer; 0.5% of the U. S. population is currently receiving cancer treatment. It is easier for these people to retain insurance in force prior to the cancer diagnosis than it is to acquire new insurance after a cancer diagnosis. A variety of problems are encountered by people seeking new insurance coverage with a cancer health history:

Group insurance can provide both health and life insurance for persons with a cancer history when work-able at a cost somewhat higher than if the group were composed only of individuals with no present or past health problems.

Individual health or life insurance may be offered by the insurance industry when the applicant cannot meet normal health requirements by added premiums, a waiver for existing or prior health conditions, or by a waiting period before the coverage becomes effective.

New applicants for insurance in an existing group after a cancer health history may find a variety of requirements or restrictions (Table 11). Some may be required to complete a health history and others may be required to undergo a physical examination.

Preexisting health conditions may be covered by group contracts after a treatment-free waiting period of 3-12 months, with an average of 3.8 months.

About 10% of insurance carriers exclude employees from group coverage because of a history of a serious illness. About 10% of carriers would raise the group premium when employees with a past history of cancer are included in the group. When group rates are increased, 88% of carriers state that they will

**TABLE 11**  
NEW APPLICANT REQUIREMENTS TO  
JOIN AN EXISTING GROUP  
INSURANCE PLAN<sup>13</sup>

Type of Insurance	Evidence of Insurability	Current Health Status
Life	51%	57%
Health	44%	60%
Disability	42%	69%

TABLE 12  
PROBLEMS ENCOUNTERED BY A NEW EMPLOYEE  
WITH A CANCER HISTORY APPLYING FOR GROUP INSURANCE<sup>4,13</sup>

Insurance	Refused	Cancer Exclusion	Waiting Period	Increased Premium
Health	23%	5-13%	30-40%	10%
Life	27%	4-11%	8-30%	8%
Disability	—	16%	18%	10%

tell the employer why the group rate is increased.

#### New Health Insurance After Cancer

One-fourth of all cancer patients in the Mayo study<sup>13</sup> applied for new health insurance after cancer treatment. Twenty-three percent were refused (Table 12). Three-quarters obtained health insurance which one-sixth of them would not accept due to high premiums, five percent were given a cancer exclusion, and 30% had waiting periods from 1-10 years, 36% more than 5 years (Table 13).

Individual health insurance applicants with a cancer health history usually face a longer waiting period of five to ten years with high premiums and often a cancer exclusion.

TABLE 13  
WAITING PERIOD FOR NEW  
INSURANCE EXPERIENCED BY 30% OF  
APPLICANTS WITH A CANCER  
HEALTH HISTORY<sup>13</sup>

Time Delay	Type of Insurance Health	Life
<1 Year	19.2%	4.2%
1-2 Years	34.6%	16.7%
2-4 Years	9.6%	12.5%
5-10 Years	36.5%	66.8%

#### New Life Insurance After Cancer

One-seventh of the former cancer patients in the Mayo series<sup>13</sup> applied for new life insurance; 27% were refused life insurance and 49% did purchase life insurance, about half, group and the rest, individual (Table 12). Thirty percent were given waiting periods of 1-8 years, with two-thirds more than 5 years (Table 13). Four percent were given waivers which ex-

cluded payment if death was due to cancer. Rating of applicants was common but details were unknown. An occasional policy was non-renewable. Neither cancer exclusion or non-renewable policies should ever be written.

Applicants with a cancer health history for individual life insurance will most likely be rated with a long waiting period.

Current cancer statistical data for underwriting are based on the NCI SEER Program.<sup>23</sup> Such data have a lag time which does not reflect present-day survival and needs more refinement according to newer staging methods such as those from the AJC (Am. Joint Committee) or the U.I.C.C.

A survey by Fitzgerald<sup>24</sup> of 45 life insurance companies showed that all 45 would underwrite some patients with a cancer history; 44 would apply a waiting period of up to 10 years; and some would apply ratings for varying time intervals. Nine of the 45 would exclude all hematologic malignancies except Hodgkin's disease; this practice is unrealistic today. Eleven of thirty would increase the waiting period if a patient had adjuvant chemotherapy or radiotherapy, which is also unfair.

#### DISCUSSION

The insurance industry remains unchallenged in its decisions regarding insurability of the cancer patient, defending its decision on sound business practice. Current underwriting procedures are frequently outdated and need to be individualized; they should be based on cancer stage, treatment, current survival data, etc.

Competition in underwriting may relax underwriting standards. This is economically feasible now that cancer treatment is more successful. A list of companies willing to un-

derwrite individuals with a cancer health history may be obtained from "Who Writes What," a publication listing companies who insure those with impairments or hazardous occupations.

Failure to provide health coverage to many with a cancer history<sup>25</sup> will place an increased burden on the taxpayer who is then called on to provide care for those people which private insurance has not or will not cover. Critical to the solution are questions regarding what responsibility for health care belongs to the private sector, to the public sector, and to the individual. Is insurance competition or regulation the solution?

Some unfair insurance practices include<sup>25</sup>:

Cancellation if substantial medical claims; excessive exclusion periods for new insurance; excessive premiums for the recovered cancer patient; permanent cancer exclusion; exclusion for benign or precancerous conditions; exclusion for skin cancer or "minimal" cancer; refusal to permit conversion of group to individual coverage; loss of insurance coverage at retirement before eligible for Medicare; inadequate coverage for rehabilitation, reconstructive procedures, or outpatient services; lack of insurance reimbursement for cancer screening and cancer prevention in high risk groups.

Pooling of the insurance risk in auto and workman's compensation insurance for persons with cancer health history may be a future trend for those without coverage. Medicaid/Medicare/MediCal can be obtained after two years of disability.

Precancerous conditions such as carcinoma in situ of the cervix and superficial melanoma (Clark Level One) are 100% curable and should not be considered abnormal health conditions. Prior treatment for fibrocystic disease of the breast or a benign colon polyp do not deserve a rating, rider, exclusion or delay in coverage. Prior treatment for a basal or squamous cell cancer of the skin should not influence insurance underwriting.

Our population is highly mobile for a myriad of reasons: change in employment, career change, change in geographic location because of a family member or for health reasons, change in the economic conditions of a community, etc. An individual with a cancer health history may find himself in a Catch-22 situation because a change in employment may affect insurance protection.<sup>26</sup>

Until there is some mechanism to transfer existing health insurance coverage to new employment, persons who have had cancer will be locked into their pre-illness jobs or lose benefits for themselves and dependents. Need for continued insurance is greatest for low income groups.

Many recovered cancer patients are unaware that at retirement, group life insurance<sup>26</sup> may be converted to individual life insurance within 31 days without medical proof of insurability; this is most important to the disabled person or the individual with a cancer history.

Some insurance companies plan to discontinue underwriting individual health insurance due to the high cost of claims. Containment of health expenditures of governmental and insurance health maintenance organizations is being tried by using HMO, Preferred Provider Organization and Diagnosis Related Groups. Large corporations are self-insuring and this practice may extend to smaller companies. Insurance companies will then be called upon to administer the claims.

Some changes have occurred in the past 60 years in the insurability of recovered cancer patients, but the progress lags far behind employability of such persons.

More data are needed on the employment experience and insurance liability for the more than five million Americans with a past history of cancer and the nearly one million Americans with a newly diagnosed cancer this year. The joint solution of this socioeconomic problem by employers, insurance companies, government, and even the American Cancer Society seems important.

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# STATE OF COLORADO

## CIVIL RIGHTS DIVISION

DOROTHY J. PORTER, Ph.D., Director

Department of Regulatory Agencies

Wellington E. Webb  
Executive Director



Robert D. Lamm  
Governor

June 17, 1986

Benjamin Schatz, Esquire  
Director, AIDS Civil Rights Project  
National Gay Rights Advocates  
540 Castro Street  
San Francisco, California 94114

Dear Mr. Schatz:

In response to your letter of May 30, 1986, requesting information on the position of the Colorado Civil Rights Commission concerning AIDS and related health conditions, Dorothy J. Porter, Ph.D., director of the Colorado Civil Rights Division, asked that I send you the enclosed materials:

- 1) 1 -- Excerpt from Minutes of the March 28, 1986, Meeting of the Colorado Civil Rights Commission.
- 2) 1 -- Laws, Rules, and Regulations of the Colorado Civil Rights Commission (Note: See especially physical handicap statute and substantive rules on physical handicap, which are highlighted in yellow in the Table of Contents.)

Also, for your information, to date no charge of AIDS discrimination has been filed with our agency.

We hope that this information proves helpful to you. Thank you for your interest in the Colorado Civil Rights Commission/Division.

Sincerely,

*Elaine Lee*

Elaine Lee, Public Information Specialist  
Colorado Civil Rights Division

enclosures

c: Dorothy J. Porter, Ph.D., Director



AIDS--Acquired Immuned Deficiency Syndrome--AS A HANDICAP

The director of the Colorado Civil Rights Division requested specific direction of the Commission so that what she and the staff determine concerning charges of discrimination because of having AIDS, would not be a "surprise" or against the views of the Commission when such a case would come before it.

When questioned as to why any formal policy statement should be made for this, over any other disease that is severely debilitating (and apparently fit the description of a "handicap" under Colorado law), Dr. Porter pointed out that the Division is getting inquiries on what the stand is of the Commission on this particular disease's classification (whether or not it is considered a "handicap") and that specific inquiries from other state agencies have come to the Division; more recently from the city officials of Ft. Collins. This is a rather new, uncharted area of a controversial subject that is not really apparent to some (or accepted) to be handicap. Ft. Collins' inquiries were made to see if the Colorado Civil Rights Commission was including AIDS as a handicap, which rulings would supersede any city ordinances.

There are emotional and social implications in this topic; in Colorado (as in other states) a bill is being considered in the legislature to require quarantining of victims of the disease. As expected, there is tremendous group and special interest objections to implementing such a program with fears of establishing questionable precedents against a special group of persons, primarily homosexuals. It is particularly troubling that this is happening because, based on currently known medical information, the disease is not readily communicable between persons. It is the public's general perception that makes AIDS "not like" other known disabilities and illnesses.

Dr. Porter has an extensive manual from a teleconference she participated in, which outlines a thorough study of the illness. It is not clearly delineated, to some people whether AIDS is a physical handicap covered under current laws, since it was not an issue or known about at the time such laws were passed, and question whether it can be considered under current physical handicap regulations.

The Commissioners reviewed its definition of "handicap" and agreed that what is known about the consequences of having AIDS--that is, it is a serious illness for which there is no known cure, is debilitating for some period of time leading to the prevention/limitation on the victim's ability to perform major life and employment functions--anyone with the disease or perceived to have the disease of AIDS can file a handicap discrimination charge.

Further concerns of the general public, resulting from being around or working with such persons is beyond the Commission's jurisdiction, and are concerns that labor unions, the medical and educational community, employing management personnel and perhaps the courts must deal with in an unclear, uncharted course in our society, where little history or case law is available as guidelines. Rights of those with the disease must be recognized and defended, but rights of those of persons who feel threatened for their own safety and health are also paramount. Fears, negative emotional, irrational views and judgments can be mitigated to some degree with knowledge of what is known at the present and observations of experiences of the medical community. What is known at the present leads to the conclusion that the disease is not readily communicable in ordinary social and business contacts.

For the record, the Commission declared that if an individual has AIDS, the Division shall take a charge for the Civil Rights Commission as a handicap charge, and each charge is to be treated as such on a case-by-case basis.

# An Invitation to Senseless AIDS Bias

## Ruling Would Give Free Reign to Employers' Unfounded Fears

By MICHAEL MOORE

Assistant Atty. Gen. Charles Cooper, in a memorandum issued by the Justice Department, has ruled that federally assisted hospitals or clinics can fire AIDS victims (or non-victims who test positive for AIDS antibodies) without running afoul of federal laws prohibiting discrimination against any "handicapped individual."

According to Cooper, as long as the AIDS victim is fired because his or her employer fears transmission of the disease to others, then the employee has no complaint, no matter how unfounded the employer's fear.

Cooper's ruling is an extremely ill-timed, badly reasoned and badly motivated bit of political decision-making that ought to be ignored by the Department of Health and Human Services (to whom the advice was given) and by the courts when they address this issue in the inevitable litigation that will follow. It should also be ignored when California voters face a like issue this coming November when they pass on an equally ill-reasoned and badly motivated proposal, the initiative sponsored by followers of Lyndon LaRouche that would restrict employment and educational opportunities for AIDS victims.

Cooper claims that his conclusions were "compelled" by the narrowness of the language of the federal statute that prohibits discrimination only against "handicapped individuals." Yet the definition of the phrase, "handicapped individuals," was explicitly broadened by Congress in 1974, over President Richard M. Nixon's veto, to include anyone who is or has been substantially impaired "in one or more of such person's major life activities," or is regarded as having such an impairment by others.

Recognizing that having AIDS is such an impairment and thus a handicap, Cooper nonetheless ruled that the transmissibility of AIDS, be it real or perceived, is not such a handicap. Thus the employer who fires an AIDS victim because he believes that the employee might transmit AIDS, not because he believes that the employee has AIDS, is exempt from the anti-discrimination ban of the federal statute.

This has the curious result of meaning that an employer who fears transmissibility can fire an employee without any evidence on which to base his belief that

AIDS can be transmitted by casual contact.

Had Cooper ruled that AIDS and its transmissibility are together one, indivisible handicap, the result would not have been that an employer would be prevented from firing his employees who are AIDS victims. On the contrary, only handicapped workers who are "otherwise qualified" for their jobs can use federal law to bar employers from firing them, and to have a communicable disease is not to be qualified for most jobs.

Under such an alternative ruling, however, an employer would have to possess some evidence supporting his fear that AIDS could be transmitted by the kind of contact the employee's job involves. Surely, the serious harm resulting from loss of employment should be suffered by those already suffering with AIDS only if there is evidence suggesting at least some degree of risk of transmission. Such evidence should be directly relevant to the tasks that each job involves, which is clearly preferable to Cooper's blunderbuss approach.

In addition to allowing employers to fire AIDS victims wholesale with no evidence of transmissibility, Cooper's ruling has troublesome implications. By Cooper's reasoning, we presumably should distinguish an employer's dislike of wheelchair-bound persons from, let's say, an employer's belief that wheelchair-bound persons bring bad luck. Armed with this distinction, we should then say that an employer can fire a handicapped employee not because of the handicap, but because the employer believes that the employee is unlucky. Unluckiness is not a handicap any more than is transmissibility of disease, even though each is a characteristic associated by some with handicapped persons.

Indeed, why stop here? Why not say that under other anti-discrimination statutes we should distinguish employers' dislike of blacks, Jews or women from employers' beliefs that blacks are lazy, that Jews are grasping, or that women are stupid. If we make this distinction, then blacks, Jews or women could be discriminated against with impunity so long as the grounds for such treatment were not that such persons were black, Jewish or female but only that they were lazy, grasping or stupid.

Cooper has sought to forestall some of such absurd implications. In a footnote to his memo he distinguishes employer beliefs based on stereotypes about blacks, Jews, women or the handicapped from beliefs not so based. Yet if AIDS is a handicap, as Cooper concedes, why is not the totally unfounded belief in its transmissibility by casual contact part of the stereotypical beliefs about AIDS victims? Witness LaRouche, whose prejudice against AIDS victims is essentially manifested by his beliefs in the easy transmissibility of AIDS.

Cooper's claim that his conclusion is "compelled" by the "plain language" of the Rehabilitation Act is hard to credit as anything but a pretext for a political decision that's hard to justify if openly made. It is particularly difficult to believe, coming as it does from the same individual who so recently defended before the Supreme Court a notion of "handicap" so expansive as to include Baby Doe treatment cases.

Such "compulsion" is also hard to credit in light of the opposite "compulsion" felt by those in the Civil Rights Division of the Justice Department who drafted a ruling reaching a conclusion contrary to Cooper's—a draft that three weeks ago was apparently overruled by Reagan Administration appointees in the department.

When issuing rulings about the permissible and impermissible motivations of employers firing AIDS victims, those heading the Justice Department should ask some motivational questions of themselves: Is their licensing of discriminatory firing of AIDS victims motivated by some legitimate concern such as public health or the unfortunate "compulsion" of too-narrow statutory language? Or is this ruling, like the LaRouche initiative in California, motivated by conservatives' dislike for gays and their activities, for which the AIDS scare is a convenient pretext?

If the latter is the case, then this discriminatory ruling, like the discriminatory firings that it would permit, should be even more forcefully disavowed when the issue is decided in the courts.

Michael Moore is the Robert Kingsley Professor of Law at USC.

# Clergy Can't Duck This Moral Imperative

By HARVEY J. FIELDS

commemorations of the 10th anniversary

## Human Rights Law Protects AIDS Victims

The director of the Texas Commission on Human Rights said Tuesday that a 1983 law protecting handicapped workers from employment bias applies to people with AIDS.

William Hale, director of the state commission which works with the federal Equal Employment Opportunity Commission, said that the law bans employment discrimination against persons with permanent physical or mental handicaps. He added that AIDS victims would be included because the disease is physical and permanent.

The law prohibits discrimination against persons whose handicap does not prevent them from performing their job duties. Hale believes AIDS victims, especially in the early stages of the disease, can satisfactorily perform most jobs.

Under the law, AIDS victims denied employment would file a complaint with the commission. An investigation would be used to determine whether the employer knew the applicant had AIDS and if that was a factor in refusing to hire the complainant.

Although the agency has yet to receive any complaints from AIDS victims, Hale expects to receive some "sooner or later."

TEXAS

Montrose Voice 11/8/85

## Texans With AIDS Protected From Job Bias

AUSTIN—A 1983 state law protecting handicapped workers from employment discrimination applies to people with AIDS, according to William Hale, director of the Texas Commission on Human Rights. The law bans employment bias against people with permanent physical and mental handicaps. Hale said the law protects people with AIDS because the syndrome is both physical and permanent. He also indicated that people with AIDS, especially during the early stages of the ailment, are capable of performing most jobs.

Texans with AIDS denied employment because of their illness can file a complaint with the commission, reports the *Montrose Voice*. The agency has yet to receive any complaints of that nature, but Hale predicted that some would eventually be reported.

## Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON, D. C. 20004



October 15, 1985

IN REPLY REFER TO

LCD:PLR:MAH:  
LCD:1077

The Honorable John Ray  
Councilmember At Large  
Council of the District of Columbia  
Washington, D.C. 20004

RE: Applicability of the D.C. Human Rights  
Act of 1977 to Persons with Acquired  
Immune Deficiency Syndrome (AIDS)

Dear Councilmember Ray:

By letter of September 10, 1985, you have sought the advice of this Office on the applicability of the District of Columbia Human Rights Act of 1977, D.C. Code §1-2501 et seq. (1981 ed.), to discrimination against persons with acquired immune deficiency syndrome (AIDS).

The Human Rights Act prohibits discrimination based on physical handicap in employment, education, public accommodations, and housing. "Physical handicap" is defined as "a bodily or mental disablement which may be the result of injury, illness or congenital condition for which reasonable accommodation can be made." D.C. Code §1-2502 (23) (1981 ed.). For guidance on coverage of this provision, the D.C. Office of Human Rights and District of Columbia courts have looked to the analogous federal statute, which prohibits handicap discrimination in federally assisted programs. §504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (1982); see also *Miller v. American Coalition of Citizens with Disabilities*, 485 A.2d 186 (D.C. 1984). The Rehabilitation Act defines



"handicapped individual" as "any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." 29 U.S.C. §706 (7) (B) (1982).

According to the Centers for Disease Control of the U.S. Public Health Service, AIDS is a serious disease which reduces the body's immune response, leaving the affected person vulnerable to life-threatening infections and malignancies. 34 Morbidity and Mortality Weekly Report No. 1, p.4 (January 11, 1985). Depending on the specific course of the disease, it seems inevitable that AIDS would constitute a "physical disablement" resulting from illness within the meaning of the Human Rights Act, and an impairment substantially limiting the persons' "major life activities" <sup>1</sup>/ as defined by the federal Rehabilitation Act. While there does not appear to be any judicial decision directly on point, this conclusion is consistent with the decision in New York State Association for Retarded Children, Inc. v. Carey, 612 F.2d 644 (2d Cir. 1979). In that case a school board proposed to segregate from other students certain mentally retarded children infected with hepatitis B. (Hepatitis B is a serious viral disease which, like AIDS, is transmitted by bodily fluids.) The court struck down the plan as a violation of section 504 of the Rehabilitation Act, holding that the board had failed to justify its restrictive policy as necessary to prevent the spread of the disease. Such evidence was needed, the court held, in order to counter a strong showing of harm to the children whose isolation was proposed. Id. at 650-51.

In my opinion, therefore, the Director of the Office of Human Rights is correct in concluding in her June 24, 1985 letter that the provisions of the Human Rights Act regarding discrimination on the basis of handicap are applicable to discrimination against those suffering from AIDS as well as those

<sup>1</sup>/ Regulations promulgated by the Department of Health and Human Services define "major life activities" to mean "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working." 45 C.F.R. §84.3 (j) (2) (ii) (1984).

"regarded" as having the disease, whether correctly or incorrectly.<sup>2</sup>/ An individual may claim the protection of the Human Rights Act regardless of the basis upon which that individual is categorized as suffering from AIDS, including the results of a test for antibodies or membership in a group at higher risk of infection.<sup>3</sup>/

<sup>2</sup>/ The Director of the Office of Human Rights has interpreted the handicap discrimination provisions of the Human Rights Act, like the federal Rehabilitation Act, to cover persons with a record or history of impairment, and persons who are "regarded" as impaired. The legislative history of the federal provision on this point explains the drafters' intentions:

The new definition clarifies the intention to include those persons who are discriminated against on the basis of handicap, whether or not they are in fact handicapped, just as title VI of the Civil Rights Act of 1964 prohibits discrimination on the ground of race, whether or not the person discriminated against is in fact a member of a racial minority. This subsection includes...those persons who do not in fact have the condition which they are perceived as having, as well as those whose mental or physical condition does not substantially limit their life activities....Both of these groups may be subjected to discrimination on the basis of their being regarded as handicapped.

Joint Conference Report, Sen. Rep. No 93-1270, 93d Cong., 2d Sess., 35003, 35010, reprinted in [1974] U.S. Code Cong. and Ad. News 6373, 6389. As a federal court has noted, "It is little solace to a person denied employment to know that the employer's view of his or her condition is erroneous. To such a person the perception of the employer is as important as reality." E.E. Black, Ltd. v. Marshall, 497 F.Supp. 1088, 1097 (D. Hawaii 1980).

<sup>3</sup>/ In one complaint filed with the U.S. Department of Health and Human Services, an employee has charged that his employer's decision to place him on unpaid leave after it was disclosed that he had a condition that sometimes precedes AIDS constituted handicap discrimination. The administrative complaint alleges that he was "regarded" as handicapped by the employer, and was therefore within the protection of §504 of the Rehabilitation Act, 29 U.S.C. §706 (7) (B) (1982). The complaint is currently under investigation. Doe v. Charlotte Memorial Hospital, reported in Lambda Update, Fall 1985, at 4, 6-7.



The specific applications of the Human Rights Act to the questions which you pose are discussed below.

#### Employment Discrimination

- 1) Does the Act prevent an employer from firing, refusing to hire or taking other discriminatory action against a person diagnosed as having, or rumored to have, AIDS?

The D.C. Human Rights Act provides:

(a) General. - It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the ...physical handicap...of any individual:

(1) To fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee;

(2) To fail or refuse to refer for employment, or to classify or refer for employment, any individual, or otherwise to discriminate against, any individual; or

(3) To exclude or to expel from its membership, or otherwise to discriminate against, any individual; or to limit, segregate, or classify its membership; or to classify, or fail or refuse to refer for employment any individual in any way, which would deprive such individual of employment opportunities, or would limit such employment opportunities, or otherwise adversely affect his status as an employee or as an applicant for employment; or

(4) (A) To discriminate against any individual in admission to or the employment in, any program established to provide apprenticeship or other training or retraining, including an on-the-job training program;

\*\*\*

(b) Subterfuge. - It shall further be an unlawful discriminatory practice to do any of the above said acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason based on the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, matriculation, physical handicap, or political affiliation of any individual.

D.C. Code §1-2512 (1981 ed.).

The Act also provides for a general "business necessity" defense applicable to any allegation of discrimination:

Any practice which has a discriminatory effect and which would otherwise be prohibited by this chapter shall not be deemed unlawful if it can be established that such practice is not intentionally devised or operated to contravene the prohibitions of this chapter and can be justified by business necessity. Under this chapter, a "business necessity" exception is applicable only in each individual case where, it can be proved by a respondent that, without such exception, such business cannot be conducted; a "business necessity" exception cannot be justified by the facts of increased cost to business, business efficiency, the comparative characteristics of 1 group as opposed to another, the stereotyped characterization of 1 group as opposed to another, and the preference of co-workers, employers, customers or any other person.

D.C. Code §2503(a) (1981 ed.).

Complaints of intentional handicap discrimination under the Human Rights Act proceed according to the well established principles of McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). The complainant must initially establish a prima facie case of discrimination by proving that he is a member of the protected class and was denied employment or another benefit for which he was otherwise qualified. Miller v. American Coalition With Disabilities, Inc., 485 A.2d 186, 189-90 (D.C. 1984). The

burden then shifts to the employer to demonstrate a legitimate, nondiscriminatory reason for the employee's rejection. If the employer succeeds, the burden shifts back to the employee to prove that the stated explanation is in fact a pretext for discrimination. Id. at 190.

An employer would be prohibited from firing, refusing to hire, or taking other discriminatory action against an individual on grounds that the person has AIDS unless he could show (1) that he had a legitimate, nondiscriminatory reason for the action (such as legal disqualification for the job), <sup>4</sup>/ or (2) that the decision was based upon a business necessity. In this regard it should be noted, however, that allegations of business necessity are carefully scrutinized. Ross v. Gama Shoes, Inc., 23 E.P.D. ¶31,150 (D.C. Super. Ct., July 21, 1980) (employer's fear of liability for damage caused by employee's violent seizures does not support a finding that his removal was justified by business necessity).

#### Reasonable Accommodation

2) Could an employer rely on the "reasonable accommodation" clause to act against an AIDS victim in a manner that otherwise would be found illegally discriminatory?

As noted above, the Human Rights Act prohibits discrimination based on any "physical or mental disablement...for which reasonable accommodation can be made." D.C. Code §1-2502 (23) (1981 ed.). Reasonable accommodation is a term which originated in regulations promulgated under the federal Rehabilitation Act, 45 C.F.R. §84.12 (1984). Those regulations extend protection only to a "qualified" handicapped person, which is defined (with respect to employment) as one who, with reasonable accommodation, can perform the essential functions of the job. 45 C.F.R. §84.3 (k) (1) (1984). The regulations stipulate that an employer must make a reasonable accommodation for a handicapped employee unless to do so would impose an "undue hardship" upon the employer. 45 C.F.R. §84.12.

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<sup>4</sup>/ A lack of qualification might be shown where licensing or regulatory requirements prohibit performance of the duties in question by a person who has been diagnosed as having AIDS -- as distinguished from a person who has a positive HTLV-III antibody test result (see page 11, infra). The regulations governing "Hospital Personnel and Operations," 22 D.C.M.R. §2103.3, and "Food Operations," 23 D.C.M.R. §2200.1, prohibit any person with a communicable disease from being employed by a hospital to perform direct patient care or engaging in work involving contact with unprotected food for human consumption. Acquired immune deficiency syndrome is defined as a communicable disease in 22 D.C.M.R. §201.5(a).

Rather than defining those "qualified" handicapped persons against whom discrimination is prohibited, the Human Rights Act defines the protected class of handicapped individuals as those whose disablement may reasonably be accommodated. The effect is the same: a handicapped person lacking a capacity essential to performance of the job (as, for example, good eyesight is essential for a school bus driver) need not be hired, either because he is not qualified, or because his disablement cannot be reasonably accommodated.

In this respect, therefore, a person with AIDS is not protected from discrimination under the Human Rights Act when his or her condition cannot reasonably be accommodated. In order to prevail on that defense, however, the employer must prove that there is no accommodation that would enable the person to perform the job, or that the desired accommodation would impose undue hardship.

#### Educational Discrimination

3) Does the Act require educational institutions, both public and private, to admit AIDS patients to regular classroom instruction and all other school activities on the same basis as other students?

The Human Rights Act provides:

It is an unlawful discriminatory practice ... subject for an educational institution:

(1) To deny, restrict, or to abridge or condition the use of, or access to, any of its facilities and services to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon the ... physical handicap of any individual...

D.C. Code §1-2520 (1) (1981 ed.). The act defines "educational institution" to include:

any public or private institution including an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system or university; and a business, nursing, professional, secretarial, technical, or vocational school; and includes an agent of an educational institution.

D.C. Code §1-2502 (8) (1981 ed.).

The act's definition of "physical handicap" as a disablement for which reasonable accommodation can be made is equally applicable in the educational context. An educational institution which restricts use of its services or facilities by

persons diagnosed as having AIDS may seek to prove that the student's illness cannot reasonably be accommodated by a less restrictive policy. That conclusion must be shown to be based upon evaluation of the genuine medical risks, however, and the response must be carefully tailored not to compromise the individual's rights more than is necessary. New York State Association for Retarded Children, Inc. v. Carey, supra.

The business necessity defense of D.C. Code §1-2503(a) is also available to educational institutions charged with handicap discrimination. While I am aware of no cases applying a business necessity defense in an education context, an institution might succeed if it can show that its business "cannot be conducted" without the specific restrictive policies it has adopted.<sup>5</sup>/

#### Public Accommodations

4) Does the Act prohibit restaurants, hotels, and other public accommodations from denying service to a person with AIDS?

The Human Rights Act provides:

(a) General. - It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based on the...physical handicap...of any individual.

(1) To deny, directly or indirectly, any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodations;

(2) To print, circulate, post, or mail, or otherwise cause, directly or indirectly, to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation will be unlawfully refused, withheld from or denied an individual; or that an individual's patronage of, or presence at, a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable.

<sup>5</sup>/ See p. 6, supra.

(b) Subterfuge. - It is further unlawful to do any of the above said acts for any reason that would not have been asserted but for, wholly or partially, a discriminatory reason based on the...physical handicap...of any individual.

D.C. Code §1-2519 (1981 ed.). As in the case of other types of discrimination, the Human Rights Act would prohibit any denial of service to or other discriminatory treatment of an individual because he or she had AIDS unless a "business necessity" were shown. The discriminatory policy could be justified by "business necessity" if the respondent were able to prove that its business could not be conducted in the absence of the policy.

#### Housing Discrimination

5) Does the Act require owners and agents of rental housing, real estate brokers, and real estate salespersons to treat AIDS victims on the same basis as all other persons in housing rental and sales transactions?

The Human Rights Act makes it an unlawful discriminatory practice for any individual, on the basis of physical handicap:

(1) To interrupt or terminate, or refuse or fail to initiate or conduct any transaction in real property; or to require different terms for such transaction; or to represent falsely that an interest in real property is not available for transaction;

(2) To include in the terms or conditions of a transaction in real property, any clause, condition or restriction;

(3) To refuse to lend money, guarantee a loan, accept a deed of trust or mortgage, or otherwise refuse to make funds



available for the purchase, acquisition, construction, alteration, rehabilitation, repair or maintenance of real property; or impose different conditions on such financing; or refuse to provide title or other insurance relating to the ownership or use of any interest in real property;

(4) To refuse or restrict facilities, services, repairs or improvements for a tenant or lessee;

(5) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to a transaction, or proposed transaction, in real property, or financing relating thereto, which notice, statement, or advertisement unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on...physical handicap...; or

(6) To discriminate in any financial transaction involving real property, on account of the location of residence or business (i.e. to "red-line").

D.C. Code §1-2515. The act also prohibits the practices of "blockbusting" and "steering," §1-2516, and requires any violations of the act by real estate brokers or sales personnel to be reported to the Real Estate Commission for use in possible suspension or revocation proceedings, §1-2517.

The Human Rights Act contains an exemption for rental of housing in a building in which the owner or members of the owner's family reside, and which has accommodations for not more than two families living independently, or five families if the owner anticipates sharing a kitchen or bath with the prospective tenant. D.C. Code §1-2518 (1981 ed.).

If not within the exception stated above, evidence of a refusal to sell or rent housing to any person because he or she has been diagnosed as suffering from AIDS would establish a prima facie case of handicap discrimination under the Human Rights Act. The burden would then shift to the respondent to prove that such refusal or other discriminatory act was justified by business necessity, that is, that the business cannot be conducted in the absence of the discriminatory policy.<sup>6</sup>/

6 / Under Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 et seq. (1982), cited as a model for the Human Rights Act, establishment of a prima facie case of housing discrimination shifts the burden to the respondent to state a legitimate, non-discriminatory reason for the practice, if intentional discrimination is alleged, or a business necessity in cases alleging disparate impact of a facially neutral practice. Betsey v. Turtle Creek Associates, 736 F.2d 983 (4th Cir. 1984).

#### HTLV-III Antibody Test

6) In all of the situations described above, what protection does the Act provide to persons known to have or reported to have tested positive on the blood test to identify the presence of antibodies to the AIDS virus, or who are in population categories considered high-risk for the disease?

The human T-lymphotropic virus type III, or HTLV-III, has been determined to be the likely cause of AIDS by the Centers for Disease Control of the U.S. Public Health Service, 34 Morbidity and Mortality Weekly Report No. 1, pp. 2-8 (January 11, 1985). A test has been developed which, with proper use and confirmation, indicates the presence or absence of antibodies to the HTLV-III virus in blood. The presence of such antibodies indicates some exposure to the virus but does not indicate that the subject has AIDS or will develop it in the future, nor whether the subject is capable of transmitting the virus to others through the known methods of exposure (sexual contact, blood transfusions, and sharing of needles). Id. at 5. In addition, some specimens will result in false positive readings due to the test's cross-reactivity to some non-HTLV-III antibodies. Ibid.

As discussed above, discrimination against any individual based upon the result or presumed result of a test for antibodies of the HTLV-III virus would constitute handicap discrimination under the Human Rights Act. Supra at 3. The burden of proof in such cases would be the same as in cases in which the discriminatory actions are based upon a diagnosis of AIDS.

The Human Rights Act does not explicitly proscribe giving the HTLV-III antibody test or other medical tests in connection with employment, education, public accommodations, and housing. However, establishment of an across-the-board policy of requiring the test could have a disparate impact upon the highest-risk group, homosexual men, <sup>7</sup>/ resulting in unlawful discrimination on the basis of sexual orientation.

The Human Rights Act provides that "any practice which has the effect or consequence of violating any of the provisions of [the act] shall be deemed to be an unlawful discriminatory practice." D.C. Code §1-2532 (1981 ed.). A policy of requiring

7 / The District of Columbia Commission on Public Health reports that 87% of all AIDS cases in the District are found in homosexual and bisexual men.

testing for HTLV-III antibodies might well have the effect of excluding homosexual men from employment opportunities; a positive result on the test could lead to loss of insurance coverage, loss of future employment, or other discrimination. In that case, a prima facie case of discrimination on the basis of sexual orientation could be established. The burden would then shift to the employer to demonstrate a legitimate, nondiscriminatory reason for the policy, or to prove that the policy is justified by business necessity.

#### Insurance

7) Does the Act's inclusion of "insurance companies and establishments of insurance policy brokers" in the definition of "place of public accommodation" require health, life, disability insurers to issue policies to applicants

- a) who have AIDS,
- b) who test positive on the blood test to identify the presence of antibodies to the AIDS virus, or
- c) who are in population categories considered high-risk for the disease?

The act defines "place of public accommodation" to include

"all places included in the meaning of such terms as inns, taverns, road houses, hotels, ...restaurants...wholesale and retail stores, and establishments dealing with goods and services of any kind, including, but not limited to...insurance companies and establishments of insurance policy brokers..."

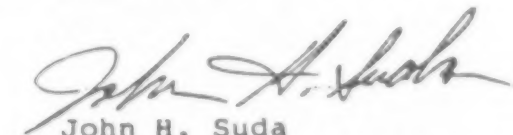
D.C. Code §1-250 (24) (1981 ed.) (emphasis added). This provision has previously been construed by this Office to prohibit discrimination in admission to and enjoyment of places of public accommodation, including insurance company offices, but not in risk assessment or insurability decisions of the industry itself. 3 Op. C.C. 1984 (1978) (Human Rights Act's prohibition on sex discrimination inapplicable to terms of insurance contracts). This conclusion is bolstered by comparison with the Civil Rights Act of 1964, after which the Human Rights Act was patterned. Title II of the Civil Rights Act, 42 U.S.C. §2000a

(b)(3), prohibiting discrimination in public accommodations, was intended "to remove the daily affront and humiliation involved in discriminatory denials of access to facilities ostensibly open to the general public." Daniel v. Paul, 395 U.S. 298, 308 (1969) (emphasis added). I therefore conclude that the Human Rights Act's prohibition on discrimination in places of public accommodation does not prohibit discrimination against persons with AIDS or others in protected groups in risk assessment or sales of insurance.

Section 271 of the Human Rights Act, D.C. Code §1-2533 (1985 Supp.) prohibits sellers of motor vehicle insurance from cancelling or refusing to issue or renew a policy of motor vehicle insurance "for a discriminatory reason based on race, color, religion, national origin, sex, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, political affiliation, lawful occupation, or location within the geographical area of the District of Columbia of any individual...." That section does not apply to other types of insurance policies, however.

I have addressed your eighth question in answers 6 and 7 above.

Sincerely,



John H. Suda  
Acting Corporation Counsel, D.C.

Philadelphia Gay News  
Jan. 3-9, 1986

## TRI-STATE NEWS

# Del. HRC to Accept AIDS Discrimination Complaints

by John Ward

The acting chair of the Delaware Human Relations Commission (HRC) said that "it is official as far as I am concerned" that AIDS discrimination complaints will be accepted under the state's handicap anti-discrimination law.

Alfred Daniel said that concern about AIDS discrimination was expressed at the November and December meetings of HRC, though no AIDS-related complaints have yet been received. "I am gravely concerned about any discrimination that could occur if it is found out people have the disease," he said.

A spokesperson for the Human Relations Division, a state agency associated with HRC, said that state law defines handicap as a "physical

or mental impairment which substantially limits one or more of such person's major life activities" as well as a "record of being regarded as having such an impairment." Handicap discrimination is banned in housing and public accommodations by state law; an executive order by former Governor Pierre du Pont covers state employment and services.

Delaware allows private employers to discriminate against the handicapped. The state Department of Labor (DOL) Anti-Discrimination Unit is not accepting AIDS-related complaints. But the chief appeals referee in DOL's Division of Unemployment Insurance said that if an individual was fired for an involuntary illness that was "collaborated

by competent medical evidence," he or she would qualify for unemployment insurance. She added that an individual without AIDS who was fired for AIDS-related reasons would qualify unless misconduct was involved.

Neither the state nor New Castle County nor the city of Wilmington has AIDS policies for their employees; they also have not received any AIDS-related discrimination complaints. The three employers do not protect their lesbian and gay workers from discrimination. Wilmington and New Castle County have laws banning discrimination against employees on the basis of handicaps.

New Castle County Chief Person-  
(Continued on page 10)

DELAWARE

## IRC to Accept AIDS Complaints

(Continued from page 3)

nel Administrator Deborah Gaines said that employees with AIDS would be handled like persons with any other illness. The county's non-discrimination clause includes physical disability but does not define it.

A state Division of Public Health policy that is at least three years old bans discrimination in DPH services on the basis of sexual preference. Spokespersons for both the Department of Health and Social Services and the Department of Services to Children, Youth and Their Families said that neither includes sexual orientation or preference in its anti-

discrimination clauses for employment or services.

Daniel said that he is also concerned about AIDS discrimination in private employment. He said he asked the state Board of Education to issue AIDS guidelines to employers because "I thought it was better that it come from the state rather than we have press it." Daniel serves on the Board of Education.

Daniel is concerned that the privacy of senior employees could be violated since schools do have medical files for employee health insurance.



# MORBIDITY AND MORTALITY WEEKLY REPORT

- 681 Summary: Recommendations for Preventing Transmission of Infection with HTLV-III/LAV in the Workplace  
682 Recommendations for Preventing Transmission of Infection with HTLV-III/LAV in the Workplace

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## Current Trends

### Summary: Recommendations for Preventing Transmission of Infection with Human T-Lymphotropic Virus Type III/ Lymphadenopathy-Associated Virus in the Workplace

The information and recommendations contained in this document have been developed with particular emphasis on health-care workers and others in related occupations in which exposure might occur to blood from persons infected with HTLV-III/LAV, the "AIDS virus." Because of public concern about the purported risk of transmission of HTLV-III/LAV by persons providing personal services and those preparing and serving food and beverages, this document also addresses personal-service and food-service workers. Finally, it addresses "other workers"—persons in settings, such as offices, schools, factories, and construction sites, where there is no known risk of AIDS virus transmission.

Because AIDS is a bloodborne, sexually transmitted disease that is not spread by casual contact, this document does *not* recommend routine HTLV-III/LAV antibody screening for the groups addressed. Because AIDS is not transmitted through preparation or serving of food and beverages, these recommendations state that food-service workers known to be infected with AIDS should not be restricted from work unless they have another infection or illness for which such restriction would be warranted.

This document contains detailed recommendations for precautions appropriate to prevent transmission of all bloodborne infectious diseases to people exposed—in the course of their duties—to blood from persons who may be infected with HTLV-III/LAV. They emphasize that health-care workers should take all possible precautions to prevent needlestick injury. The recommendations are based on the well-documented modes of HTLV-III/LAV transmission and incorporate a "worst case" scenario, the hepatitis B model of transmission. Because the hepatitis B virus is also bloodborne and is both harder and more infectious than HTLV-III/LAV, recommendations that would prevent transmission of hepatitis B will also prevent transmission of AIDS.

Formulation of specific recommendations for health-care workers who perform invasive procedures is in progress.

### Recommendations for Preventing Transmission of Infection with Human T-Lymphotropic Virus Type III/ Lymphadenopathy-Associated Virus in the Workplace

Persons at increased risk of acquiring infection with human T-lymphotropic virus type III/lymphadenopathy-associated virus (HTLV-III/LAV), the virus that causes acquired immunodeficiency syndrome (AIDS), include homosexual and bisexual men, intravenous (IV) drug abusers, persons transfused with contaminated blood or blood products, heterosexual contacts of persons with HTLV-III/LAV infection, and children born to infected mothers. HTLV-III/LAV is transmitted through sexual contact, parenteral exposure to infected blood or blood components, and perinatal transmission from mother to neonate. HTLV-III/LAV has been isolated from blood, semen, saliva, tears, breast milk, and urine and is likely to be isolated from some other body fluids, secretions, and excretions, but epidemiologic evidence has implicated only blood and semen in transmission. Studies of nonsexual household contacts of AIDS patients indicate that casual contact with saliva and tears does not result in transmission of infection. Spread of infection to household contacts of infected persons has not been detected when the household contacts have not been sex partners or have not been infants of infected mothers. The kind of nonsexual person-to-person contact that generally occurs among workers and clients or consumers in the workplace does not pose a risk for transmission of HTLV-III/LAV.

As in the development of any such recommendations, the paramount consideration is the protection of the public's health. The following recommendations have been developed for all workers, particularly workers in occupations in which exposure might occur to blood from individuals infected with HTLV-III/LAV. These recommendations reinforce and supplement the specific recommendations that were published earlier for clinical and laboratory staffs (1) and for dental-care personnel and persons performing necropsies and morticians' services (2). Because of public concern about the purported risk of transmission of HTLV-III/LAV by persons providing personal services and by food and beverages, these recommendations contain information and recommendations for personal-service and food-service workers. Finally, these recommendations address workplaces in general where there is no known risk of transmission of HTLV-III/LAV (e.g., offices, schools, factories, construction sites). Formulation of specific recommendations for health-care workers (HCWs) who perform invasive procedures (e.g., surgeons, dentists) is in progress. Separate recommendations are also being developed to prevent HTLV-III/LAV transmission in prisons, other correctional facilities, and institutions housing individuals who may exhibit uncontrollable behavior (e.g., custodial institutions) and in the perinatal setting. In addition, separate recommendations have already been developed for children in schools and day-care centers (3).

HTLV-III/LAV-infected individuals include those with AIDS (4); those diagnosed by their physician(s) as having other illnesses due to infection with HTLV-III/LAV; and those who have virologic or serologic evidence of infection with HTLV-III/LAV but who are not ill.

These recommendations are based on the well-documented modes of HTLV-III/LAV transmission identified in epidemiologic studies and on comparison with the hepatitis B experience. Other recommendations are based on the hepatitis B model of transmission.

#### COMPARISON WITH THE HEPATITIS B VIRUS EXPERIENCE

The epidemiology of HTLV-III/LAV infection is similar to that of hepatitis B virus (HBV) infection, and much that has been learned over the last 15 years related to the risk of acquiring hepatitis B in the workplace can be applied to understanding the risk of HTLV-III/LAV transmission in the health-care and other occupational settings. Both viruses are transmitted through

*HTLV-III/LAV - Continued*

sexual contact, parenteral exposure to contaminated blood or blood products, and perinatal transmission from infected mothers to their offspring. Thus, some of the same major groups at high risk for HBV infection (e.g., homosexual men, IV drug abusers, persons with hemophilia, infants born to infected mothers) are also the groups at highest risk for HTLV-III/LAV infection. Neither HBV nor HTLV-III/LAV has been shown to be transmitted by casual contact in the workplace, contaminated food or water, or airborne or fecal-oral routes (5).

HBV infection is an occupational risk for HCWs, but this risk is related to degree of contact with blood or contaminated needles. HCWs who do not have contact with blood or needles contaminated with blood are not at risk for acquiring HBV infection in the workplace (6-8).

In the health-care setting, HBV transmission has not been documented between hospitalized patients, except in hemodialysis units, where blood contamination of the environment has been extensive or where HBV-positive blood from one patient has been transferred to another patient through contamination of instruments. Evidence of HBV transmission from HCWs to patients has been rare and limited to situations in which the HCWs exhibited high concentrations of virus in their blood (at least 100,000,000 infectious virus particles per ml of serum), and the HCWs sustained a puncture wound while performing traumatic procedures on patients or had exudative or weeping lesions that allowed virus to contaminate instruments or open wounds of patients (9-11).

Current evidence indicates that, despite epidemiologic similarities of HBV and HTLV-III/LAV infection, the risk for HBV transmission in health-care settings far exceeds that for HTLV-III/LAV transmission. The risk of acquiring HBV infection following a needlestick from an HBV carrier ranges from 6% to 30% (12,13), far in excess of the risk of HTLV-III/LAV infection following a needlestick involving a source patient infected with HTLV-III/LAV, which is less than 1%. In addition, all HCWs who have been shown to transmit HBV infection in health-care settings have belonged to the subset of chronic HBV carriers who, when tested, have exhibited evidence of exceptionally high concentrations of virus (at least 100,000,000 infectious virus particles per ml) in their blood. Chronic carriers who have substantially lower concentrations of virus in their blood have not been implicated in transmission in the health-care setting (9-11,14). The HBV model thus represents a "worst case" condition in regard to transmission in health-care and other related settings. Therefore, recommendations for the control of HBV infection should, if followed, also effectively prevent spread of HTLV-III/LAV. Whether additional measures are indicated for those HCWs who perform invasive procedures will be addressed in the recommendations currently being developed.

Routine screening of all patients or HCWs for evidence of HBV infection has never been recommended. Control of HBV transmission in the health-care setting has emphasized the implementation of recommendations for the appropriate handling of blood, other body fluids, and items soiled with blood or other body fluids.

**TRANSMISSION FROM PATIENTS TO HEALTH-CARE WORKERS**

HCWs include, but are not limited to, nurses, physicians, dentists and other dental workers, optometrists, podiatrists, chiropractors, laboratory and blood bank technologists and technicians, phlebotomists, dialysis personnel, paramedics, emergency medical technicians, medical examiners, morticians, housekeepers, laundry workers, and others whose work involves contact with patients, their blood or other body fluids, or corpses.

Recommendations for HCWs emphasize precautions appropriate for preventing transmission of bloodborne infectious diseases, including HTLV-III/LAV and HBV infections. Thus, these precautions should be enforced routinely, as should other standard infection-control precautions, regardless of whether HCWs or patients are known to be infected with HTLV-III/LAV or HBV. In addition to being informed of these precautions, all HCWs, including students

*HTLV-III/LAV - Continued*

and housestaff, should be educated regarding the epidemiology, modes of transmission, and prevention of HTLV-III/LAV infection.

**Risk of HCWs acquiring HTLV-III/LAV in the workplace.** Using the HBV model, the highest risk for transmission of HTLV-III/LAV in the workplace would involve parenteral exposure to a needle or other sharp instrument contaminated with blood of an infected patient. The risk to HCWs of acquiring HTLV-III/LAV infection in the workplace has been evaluated in several studies. In five separate studies, a total of 1,498 HCWs have been tested for antibody to HTLV-III/LAV. In these studies, 666 (44.5%) of the HCWs had direct parenteral (needlestick or cut) or mucous membrane exposure to patients with AIDS or HTLV-III/LAV infection. Most of these exposures were to blood rather than to other body fluids. None of the HCWs whose initial serologic tests were negative developed subsequent evidence of HTLV-III/LAV infection following their exposures. Twenty-six HCWs in these five studies were seropositive when first tested; all but three of these persons belonged to groups recognized to be at increased risk for AIDS (15). Since one was tested anonymously, epidemiologic information was available on only two of these three seropositive HCWs. Although these two HCWs were reported as probable occupationally related HTLV-III/LAV infection (15,16), neither had a preexposure nor an early postexposure serum sample available to help determine the onset of infection. One case reported from England describes a nurse who seroconverted following an accidental parenteral exposure to a needle contaminated with blood from an AIDS patient (17).

In spite of the extremely low risk of transmission of HTLV-III/LAV infection, even when needlestick injuries occur, more emphasis must be given to precautions targeted to prevent needlestick injuries in HCWs caring for any patient, since such injuries continue to occur even during the care of patients who are known to be infected with HTLV-III/LAV.

**Precautions to prevent acquisition of HTLV-III/LAV infection by HCWs in the workplace.** These precautions represent prudent practices that apply to preventing transmission of HTLV-III/LAV and other bloodborne infections and should be used routinely (18).

1. Sharp items (needles, scalpel blades, and other sharp instruments) should be considered as potentially infective and be handled with extraordinary care to prevent accidental injuries.
2. Disposable syringes and needles, scalpel blades, and other sharp items should be placed into puncture-resistant containers located as close as practical to the area in which they were used. To prevent needlestick injuries, needles should not be recapped, purposefully bent, broken, removed from disposable syringes, or otherwise manipulated by hand.
3. When the possibility of exposure to blood or other body fluids exists, routinely recommended precautions should be followed. The anticipated exposure may require gloves alone, as in handling items soiled with blood or equipment contaminated with blood or other body fluids, or may also require gowns, masks, and eye-coverings when performing procedures involving more extensive contact with blood or potentially infective body fluids, as in some dental or endoscopic procedures or postmortem examinations. Hands should be washed thoroughly and immediately if they accidentally become contaminated with blood.
4. To minimize the need for emergency mouth-to-mouth resuscitation, mouth pieces, resuscitation bags, or other ventilation devices should be strategically located and available for use in areas where the need for resuscitation is predictable.
5. Pregnant HCWs are not known to be at greater risk of contracting HTLV-III/LAV infection than HCWs who are not pregnant, however, if a HCW develops HTLV-III/LAV infection during pregnancy, the infant is at increased risk of infection resulting from

**HTLV-III/LAV - Continued**

perinatal transmission. Because of this risk, pregnant HCWs should be especially familiar with precautions for the preventing HTLV-III/LAV transmission (7,9).

**Precautions for HCWs during home care of persons infected with HTLV-III/LAV.** Persons infected with HTLV-III/LAV can be safely cared for in home environments. Studies of family members of patients infected with HTLV-III/LAV have found no evidence of HTLV-III/LAV transmission to adults who were not sexual contacts of the infected patients or to children who were not at risk for perinatal transmission (3). HCWs providing home care face the same risk of transmission of infection as HCWs in hospitals and other health-care settings, especially if there are needlesticks or other parenteral or mucous membrane exposures to blood or other body fluids.

When providing health care service in the home to persons infected with HTLV-III/LAV, measures similar to those used in hospitals are appropriate. As in the hospital, needles should not be recapped, purposefully bent, broken, removed from disposable syringes, or otherwise manipulated by hand. Needles and other sharp items should be placed into puncture-resistant containers and disposed of in accordance with local regulations for solid waste. Blood and other body fluids can be flushed down the toilet. Other items for disposal that are contaminated with blood or other body fluids that cannot be flushed down the toilet should be wrapped securely in a plastic bag that is impervious and sturdy (not easily penetrated). It should be placed in a second bag before being discarded in a manner consistent with local regulations for solid waste disposal. Spills of blood or other body fluids should be cleaned with soap and water or a household detergent. As in the hospital, individuals cleaning up such spills should wear disposable gloves. A disinfectant solution or a freshly prepared solution of sodium hypochlorite (household bleach; see below) should be used to wipe the area after cleaning.

**Precautions for providers of prehospital emergency health care.** Providers of prehospital emergency health care include the following: paramedics, emergency medical technicians, law enforcement personnel, firefighters, lifeguards, and others whose job might require them to provide first-response medical care. The risk of transmission of infection, including HTLV-III/LAV infection, from infected persons to providers of prehospital emergency health care should be no higher than that for HCWs providing emergency care in the hospital if appropriate precautions are taken to prevent exposure to blood or other body fluids.

Providers of prehospital emergency health care should follow the precautions outlined above for other HCWs. No transmission of HBV infection during mouth-to-mouth resuscitation has been documented. However, because of the theoretical risk of salivary transmission of HTLV-III/LAV during mouth-to-mouth resuscitation, special attention should be given to the use of disposable airway equipment or resuscitation bags and the wearing of gloves when in contact with blood or other body fluids. Resuscitation equipment and devices known or suspected to be contaminated with blood or other body fluids should be used once and disposed of or be thoroughly cleaned and disinfected after each use.

**Management of parenteral and mucous membrane exposures of HCWs.** If a HCW has a parenteral (e.g., needlestick or cut) or mucous membrane (e.g., splash to the eye or mouth) exposure to blood or other body fluids, the source patient should be assessed clinically and epidemiologically to determine the likelihood of HTLV-III/LAV infection. If the assessment suggests that infection may exist, the patient should be informed of the incident and requested to consent to serologic testing for evidence of HTLV-III/LAV infection. If the source patient has AIDS or other evidence of HTLV-III/LAV infection, declines testing, or has a positive test, the HCW should be evaluated clinically and serologically for evidence of HTLV-III/LAV infection as soon as possible after the exposure, and, if seronegative, retested after 6 weeks and on a periodic basis thereafter (e.g., 3, 6, and 12 months following exposure) to determine if

**HTLV-III/LAV - Continued**

emergency cases and patients with short lengths of stay, and additional tests to determine whether a positive test was a true or false positive would be required in populations with a low prevalence of infection. However, this recommendation is based only on considerations of occupational risks and should not be construed as a recommendation against other uses of the serologic test, such as for diagnosis or to facilitate medical management of patients. Since the experience with infected patients varies substantially among hospitals (75% of all AIDS cases have been reported by only 280 of the more than 6,000 acute-care hospitals in the United States), some hospitals in certain geographic areas may deem it appropriate to initiate serologic testing of patients.

**TRANSMISSION FROM HEALTH-CARE WORKERS TO PATIENTS**

**Risk of transmission of HTLV-III/LAV infection from HCWs to patients.** Although there is no evidence that HCWs infected with HTLV-III/LAV have transmitted infection to patients, a risk of transmission of HTLV-III/LAV infection from HCWs to patients would exist in situations where there is both (1) a high degree of trauma to the patient that would provide a portal of entry for the virus (e.g., during invasive procedures) and (2) access of blood or serous fluid from the infected HCW to the open tissue of a patient, as could occur if the HCW sustains a needlestick or scalpel injury during an invasive procedure. HCWs known to be infected with HTLV-III/LAV who do not perform invasive procedures need not be restricted from work unless they have evidence of other infection or illness for which any HCW should be restricted. Whether additional restrictions are indicated for HCWs who perform invasive procedures is currently being considered.

**Precautions to prevent transmission of HTLV-III/LAV infection from HCWs to patients.** These precautions apply to all HCWs, regardless of whether they perform invasive procedures. (1) All HCWs should wear gloves for direct contact with mucous membranes or nonintact skin of all patients and (2) HCWs who have exudative lesions or weeping dermatitis should refrain from all direct patient care and from handling patient care equipment until the condition resolves.

**Management of parenteral and mucous membrane exposures of patients.** If a patient has a parenteral or mucous membrane exposure to blood or other body fluids of a HCW, the patient should be informed of the incident and the same procedure outlined above for exposures of HCWs to patients should be followed for both the source HCW and the potentially exposed patient. Management of this type of exposure will be addressed in more detail in the recommendations for HCWs who perform invasive procedures.

**Serologic testing of HCWs.** Routine serologic testing of HCWs who do not perform invasive procedures (including providers of home and prehospital emergency care) is not recommended to prevent transmission of HTLV-III/LAV infection. The risk of transmission is extremely low and can be further minimized when routinely recommended infection control precautions are followed. However, serologic testing should be available to HCWs who may wish to know their HTLV-III/LAV infection status. Whether indications exist for serologic testing of HCWs who perform invasive procedures is currently being considered.

**Risk of occupational acquisition of other infectious diseases by HCWs infected with HTLV-III/LAV.** HCWs who are known to be infected with HTLV-III/LAV and who have defective immune systems are at increased risk of acquiring or experiencing serious complications of other infectious diseases. Of particular concern is the risk of severe infection following exposure to patients with infectious diseases that are easily transmitted if appropriate precautions are not taken (e.g., tuberculosis). HCWs infected with HTLV-III/LAV should be counseled about the potential risk associated with taking care of patients with transmissible infections and should continue to follow existing recommendations for infection control to minimize



*HTLV-III/LAV - Continued*

their risk of exposure to other infectious agents (18,19). The HCWs' personal physician(s), in conjunction with their institutions' personnel health services or medical directors, should determine on an individual basis whether the infected HCWs can adequately and safely perform patient-care duties and suggest changes in work assignments, if indicated. In making this determination, recommendations of the Immunization Practices Advisory Committee and institutional policies concerning requirements for vaccinating HCWs with live-virus vaccines should also be considered.

**STERILIZATION, DISINFECTION, HOUSEKEEPING, AND WASTE DISPOSAL TO PREVENT TRANSMISSION OF HTLV-III/LAV**

Sterilization and disinfection procedures currently recommended for use (22,23) in health-care and dental facilities are adequate to sterilize or disinfect instruments, devices, or other items contaminated with the blood or other body fluids from individuals infected with HTLV-III/LAV. Instruments or other nondisposable items that enter normally sterile tissue or the vascular system or through which blood flows should be sterilized before reuse. Surgical instruments used on all patients should be decontaminated after use rather than just rinsed with water. Decontamination can be accomplished by machine or by hand cleaning by trained personnel wearing appropriate protective attire (24) and using appropriate chemical germicides. Instruments or other nondisposable items that touch intact mucous membranes should receive high-level disinfection.

Several liquid chemical germicides commonly used in laboratories and health-care facilities have been shown to kill HTLV-III/LAV at concentrations much lower than are used in practice (25). When decontaminating instruments or medical devices, chemical germicides that are registered with and approved by the U.S. Environmental Protection Agency (EPA) as "sterilants" can be used either for sterilization or for high-level disinfection depending on contact time; germicides that are approved for use as "hospital disinfectants" and are mycobactericidal when used at appropriate dilutions can also be used for high-level disinfection of devices and instruments. Germicides that are mycobactericidal are preferred because mycobacteria represent one of the most resistant groups of microorganisms; therefore, germicides that are effective against mycobacteria are also effective against other bacterial and viral pathogens. When chemical germicides are used, instruments or devices to be sterilized or disinfected should be thoroughly cleaned before exposure to the germicide, and the manufacturer's instructions for use of the germicide should be followed.

Laundry and dishwashing cycles commonly used in hospitals are adequate to decontaminate linens, dishes, glassware, and utensils. When cleaning environmental surfaces, housekeeping procedures commonly used in hospitals are adequate; surfaces exposed to blood and body fluids should be cleaned with a detergent followed by decontamination using an EPA-approved hospital disinfectant that is mycobactericidal. Individuals cleaning up such spills should wear disposable gloves. Information on specific label claims of commercial germicides can be obtained by writing to the Disinfectants Branch, Office of Pesticides, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460.

In addition to hospital disinfectants, a freshly prepared solution of sodium hypochlorite (household bleach) is an inexpensive and very effective germicide (25). Concentrations ranging from 5,000 ppm (a 1:10 dilution of household bleach) to 500 ppm (a 1:100 dilution) sodium hypochlorite are effective, depending on the amount of organic material (e.g., blood, mucus, etc.) present on the surface to be cleaned and disinfected.

Sharp items should be considered as potentially infective and should be handled and disposed of with extraordinary care to prevent accidental injuries. Other potentially infective waste should be contained and transported in clearly identified impervious plastic bags. If the

*HTLV-III/LAV - Continued*

outside of the bag is contaminated with blood or other body fluids, a second outer bag should be used. Recommended practices for disposal of infective waste (23) are adequate for disposal of waste contaminated by HTLV-III/LAV. Blood and other body fluids may be carefully poured down a drain connected to a sanitary sewer.

**CONSIDERATIONS RELEVANT TO OTHER WORKERS**

**Personal-service workers (PSWs).** PSWs are defined as individuals whose occupations involve close personal contact with clients (e.g., hairdressers, barbers, estheticians, cosmetologists, manicurists, pedicurists, massage therapists). PSWs whose services (tattooing, ear piercing, acupuncture, etc.) require needles or other instruments that penetrate the skin should follow precautions indicated for HCWs. Although there is no evidence of transmission of HTLV-III/LAV from clients to PSWs, from PSWs to clients, or between clients of PSWs, a risk of transmission would exist from PSWs to clients and vice versa in situations where there is both (1) trauma to one of the individuals that would provide a portal of entry for the virus and (2) access of blood or serous fluid from one infected person to the open tissue of the other, as could occur if either sustained a cut. A risk of transmission from client to client exists when instruments contaminated with blood are not sterilized or disinfected between clients. However, HBV transmission has been documented only rarely in acupuncture, ear piercing, and tattoo establishments and never in other personal-service settings, indicating that any risk for HTLV-III/LAV transmission in personal-service settings must be extremely low.

All PSWs should be educated about transmission of bloodborne infections, including HTLV-III/LAV and HBV. Such education should emphasize principles of good hygiene, antiseptics, and disinfection. This education can be accomplished by national or state professional organizations, with assistance from state and local health departments, using lectures at meetings or self-instructional materials. Licensure requirements should include evidence of such education. Instruments that are intended to penetrate the skin (e.g., tattooing and acupuncture needles, ear piercing devices) should be used once and disposed of or be thoroughly cleaned and sterilized after each use using procedures recommended for use in health-care institutions. Instruments not intended to penetrate the skin but which may become contaminated with blood (e.g., razors), should be used for only one client and be disposed of or thoroughly cleaned and disinfected after use using procedures recommended for use in health-care institutions. Any PSW with exudative lesions or weeping dermatitis, regardless of HTLV-III/LAV infection status, should refrain from direct contact with clients until the condition resolves. PSWs known to be infected with HTLV-III/LAV need not be restricted from work unless they have evidence of other infections or illnesses for which any PSW should also be restricted.

Routine serologic testing of PSWs for antibody to HTLV-III/LAV is not recommended to prevent transmission from PSWs to clients.

**Food-service workers (FSWs).** FSWs are defined as individuals whose occupations involve the preparation or serving of food or beverages (e.g., cooks, caterers, servers, waiters, bartenders, airline attendants). All epidemiologic and laboratory evidence indicates that blood-borne and sexually transmitted infections are not transmitted during the preparation or serving of food or beverages, and no instances of HBV or HTLV-III/LAV transmission have been documented in this setting.

All FSWs should follow recommended standards and practices of good personal hygiene and food sanitation (26). All FSWs should exercise care to avoid injury to hands when preparing food. Should such an injury occur, both aesthetic and sanitary considerations would dictate that food contaminated with blood be discarded. FSWs known to be infected with HTLV-III/LAV need not be restricted from work unless they have evidence of other infection or illness for which any FSW should also be restricted.

*HTLV-III/LAV - Continued*

Routine serologic testing of FSWs for antibody to HTLV-III/LAV is not recommended to prevent disease transmission from FSWs to consumers.

**Other workers sharing the same work environment.** No known risk of transmission to co-workers, clients, or consumers exists from HTLV-III/LAV-infected workers in other settings (e.g., offices, schools, factories, construction sites). This infection is spread by sexual contact with infected persons, injection of contaminated blood or blood products, and by perinatal transmission. Workers known to be infected with HTLV-III/LAV should not be restricted from work solely based on this finding. Moreover, they should not be restricted from using telephones, office equipment, toilets, showers, eating facilities, and water fountains. Equipment contaminated with blood or other body fluids of any worker, regardless of HTLV-III/LAV infection status, should be cleaned with soap and water or a detergent. A disinfectant solution or a fresh solution of sodium hypochlorite (household bleach, see above) should be used to wipe the area after cleaning.

**OTHER ISSUES IN THE WORKPLACE**

The information and recommendations contained in this document do not address all the potential issues that may have to be considered when making specific employment decisions for persons with HTLV-III/LAV infection. The diagnosis of HTLV-III/LAV infection may evoke unwarranted fear and suspicion in some co-workers. Other issues that may be considered include the need for confidentiality, applicable federal, state, or local laws governing occupational safety and health, civil rights of employees, workers' compensation laws, provisions of collective bargaining agreements, confidentiality of medical records, informed consent, employee and patient privacy rights, and employee right-to-know statutes.

**DEVELOPMENT OF THESE RECOMMENDATIONS**

The information and recommendations contained in these recommendations were developed and compiled by CDC and other PHS agencies in consultation with individuals representing various organizations. The following organizations were represented: Association of State and Territorial Health Officials, Conference of State and Territorial Epidemiologists, Association of State and Territorial Public Health Laboratory Directors, National Association of County Health Officials, American Hospital Association, United States Conference of Local Health Officers, Association for Practitioners in Infection Control, Society of Hospital Epidemiologists of America, American Dental Association, American Medical Association, American Nurses' Association, American Association of Medical Colleges, American Association of Dental Schools, National Institutes of Health, Food and Drug Administration, Food Research Institute, National Restaurant Association, National Hairdressers and Cosmetologists Association, National Gay Task Force, National Funeral Directors and Morticians Association, American Association of Physicians for Human Rights, and National Association of Emergency Medical Technicians. The consultants also included a labor union representative, an attorney, a corporate medical director, and a pathologist. However, these recommendations may not reflect the views of individual consultants or the organizations they represented.

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March 18, 1986

The Honorable James J. Blanchard  
Governor  
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Lansing, Michigan 48909

Dear Governor Blanchard:

I am transmitting for your consideration the initial report on Acquired Immune Deficiency Syndrome (AIDS) in Michigan.

Your October 21, 1985, letter directed the Public Health Advisory Council to review the current situation and make recommendations for a comprehensive state policy concerning AIDS. In response, the council created an Expert Committee on AIDS, comprised of 43 leaders in the fields of medicine and law as well as representatives of public agencies, advocacy organizations, and associations of health professionals. The Expert Committee created four subcommittees and began deliberations in December. Acting on the findings and recommendations of the Expert Committee, the Public Health Advisory Council approved this report and its recommendations on March 17.

The recommendations contained in the report reflect the consensus of a wide variety of Michigan experts about the best means to protect the public health from the spread of AIDS. Throughout its deliberations, the committee was fully cognizant of the level of concern of Michigan citizens about this syndrome. The members of the committees also recognized the need to assure that appropriate systems are available in Michigan for the care of people with AIDS.

Outstanding leadership and considerable resources have been provided by the private sector for combating AIDS in Michigan, particularly by organizations representing groups at highest risk. While private commitment continues, private resources are being strained. It is clear that additional support from both the state and federal governments is urgently needed to react to this new epidemic.

As you have said, we must guarantee that state and local agencies are doing all they can to protect the health of our citizens through a strong, comprehensive policy regarding AIDS. This report recommends policies to ease public anxiety about AIDS, to motivate individuals to change high-risk behavior, and to meet the medical and support needs of persons with AIDS.

16. Problem Statement: There is need for delineation of state policy relating to employee-employer relationships, particularly as it relates to state government.

Analysis: The Michigan Handicappers' Civil Rights Act, enacted in 1976, protects handicapped persons from discrimination in employment, housing, public accommodations, public service, and education, unless it can be demonstrated that such accommodation imposes undue hardship. All employers of four or more persons, including state and local governments, are covered by the act.

The act defines handicap as a "determinable physical characteristic . . . of an individual . . . which may result from disease . . ." The Department of Civil Rights, which administers the act, has stated that it will accept and process complaints from persons alleging unlawful discrimination based on AIDS, since AIDS appears to be within the statutory definition of a handicap. It is likely that alleged discrimination based upon ARC and HTLV-III antibody positivity would also be subject to the Handicappers' Civil Rights Act.

In addition to the fear of discrimination, concerns have been expressed by state employees regarding health and life insurance benefits. The Michigan Department of Civil Service recently reviewed state employee health benefits and life insurance and determined that AIDS-related illnesses and medical treatment are covered by both the state's health and life insurance policies.

Recommendation 16:

The Michigan Department of Civil Rights (MDCR) should enforce the provisions of the state Handicappers' Civil Rights Act to ensure that people with AIDS, ARC, or HTLV-III antibody positivity are protected against discrimination in employment, housing, public accommodations, public service, and education. The MDCR should publicize its policy regarding the rights of persons with AIDS, ARC, or HTLV-III antibody positivity.

17. Problem Statement: There is need for state contractors who provide care in settings such as foster care homes, halfway houses, and substance abuse clinics to be provided with AIDS information and policy direction.

Analysis: A substantial number of caregivers provide direct services, lodging, and other care under contract with state agencies such as the Department of Social Services (foster care homes), the Department of Mental Health (community mental health clinics), and the Department of Public Health (substance abuse clinics). Concerns for themselves, their employees, and other patients or residents must be addressed through informational materials developed by the appropriate contracting agency with the assistance of the MDPH.



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EDITION 14 ILLUSTRATED

# Taber's<sup>®</sup> CYCLOPEDIA MEDICAL DICTIONARY

F. A. DAVIS COMPANY



PHILADELPHIA

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#### infection, mixed

microorganism; s circulated from a focus of in-  
fection.

*i., mixed.* Infection caused by two or more  
organisms.

*i., pyogenic.* Infection resulting from  
pus-forming organisms.

*i., secondary.* Infection caused by a dif-  
ferent organism than the one causing the pri-  
mary infection.

*i., simple.* Infection due to a single spe-  
cies of organism.

*i., subacute.* An infection intermediate  
between acute and chronic.

*i., subclinical.* Infection that is immu-  
nologically confirmed but does not show clin-  
ical symptoms in the individual.

*i., terminal.* Infection occurring in the  
late stage of a disease. Generally acute and  
septic, usually causing death.

**infectious** (in-fek'tshus) [ME. *infecten*, infect]  
1. Capable of being transmitted with or with-  
out contact. 2. Pert. to a disease due to a mi-  
croorganism. 3. Producing infection.

**infectious disease.** Any disease caused by  
growth of pathogenic microorganisms in the  
body. May or may not be contagious. SEE  
*quarantine*; names of infectious diseases.

**infecundity** (in-fek'un-di-ti) [L. *infecundi-*  
*tas*, sterility] Barrenness; sterility in women.

**inferior** (in-fir'i-ori) [L. *inferus*, below] 1. Be-  
neath; lower. 2. [NA] Used medically in ref-  
erence to the undersurface of an organ or in-  
dicating a structure below another structure.

**inferiority complex.** In psychology, a re-  
pressed state of mind in which one feels him-  
self inferior to others. Such a group of ideas  
may be manifested by the assumption of su-  
periority, often resulting in over-compensa-  
tion. Opposite of superiority complex. SEE:  
*complex*

**infertility.** Inability or diminished ability to  
produce offspring; unproductivity. Condition  
may be present in either or both sexual part-  
ners and is usually reversible. Diagnostic in-  
vestigation includes special tests of both  
partners as well as a complete physical ex-  
amination. Some factors responsible for in-  
fertility are immature or abnormal repro-  
ductive systems, anomalies of other organs  
in that vicinity, endocrine dysfunction, and  
emotional problems.

*i., primary.* Infertility in which preg-  
nancy has never occurred.

*i., secondary.* Infertility in which there  
have been one or more pregnancies prior to  
the present condition of infertility.

**infest** [L. *infestare*, to attack] To overrun to a  
harmful extent. Said esp. of parasites.

**infestation.** The harboring of animal para-  
sites, esp. macroscopic forms such as ectopar-

aates and arthropod endoparasites.

**infibulation** (in-fib-u-lä'shun) [L. *in*, in, +  
*fibula*, clasp]. The process of fastening, as in  
joining the lips of wounds by clasps.

**infiltrate** (in-fil'trát, in-fil-trát) [ + *filtrare*,  
to strain through] 1. To pass into or through  
a substance or a space. 2. The material that  
has infiltrated.

**infiltration** (in-fil-trä'shun) The process of a  
substance passing into and being deposited  
within the substance of a cell, tissue, or organ.

Ex: infiltration of a tissue or organ with  
blood corpuscles, or of a cell by fatty parti-  
cles. Infiltration must not be confused with  
degeneration; in the latter condition the for-  
eign substances are from changes within the  
cell.

*i., amyloid.* Infiltration of tissue or vis-  
cera with a glycoprotein.

*i., anesthesia.* Injection of an anesthetic  
solution directly into the tissue.

SEE *anesthesia*.

*i., calcareous.* Deposits of calcium or  
magnesium salts within a tissue.

*i., cellular.* Infiltration of cells, esp. blood  
cells, into tissues; invasion by cells of malig-  
nant tumors into adjacent tissue.

*i., fatty.* Deposit of fat in the tissues, or  
oil or fat globules in the cells.

*i., glycogenic.* Glycogen deposit in cells.

*i., lymphocytic.* Infiltration of tissue by  
lymphocytes.

*i., pigmentary.* Infiltration of pigments.

*i., purulent.* Pus cells in a tissue.

*i., serous.* Infiltration with diluted lymph.

*i., urinous.* Infiltration with urine.

*i., waxy.* Amyloid degeneration.

**infinite distance.** 1. A distance without lim-  
its. 2. In vision, light rays coming from a  
point of any distance beyond 20 feet (6.1 me-  
ters) are practically parallel and accommo-  
dation is unnecessary.

**infirm** [L. *infirmus*] Weak or feeble, esp. from  
old age or disease.

**infirmary** [L. *infirmarium*] A small hospital;  
a place for the care of sick or infirm persons.

**infirmity.** 1. Weakness. 2. A sickness or ill-  
ness.

**inflammation** [L. *inflammare*, to flame  
within] Tissue reaction to injury. The succes-  
sion of changes which occur in living tissue  
when it is injured. The inflamed area under-  
goes continuous change as the body repair  
processes start to heal and replace injured  
tissue. Inflammation is a conservative pro-  
cess modified by whatever produces the re-  
action, but it should not be confused with in-  
fection; the two are relatively different  
conditions, although one may arise from the  
other. SEE: *infection*.

flicted with leprosy.  
**lepid-** [Gr. *lepis*, scale]. Combining form referring to flakes or scales.

**Lepidoptera** (lêp'i-dôp'têr-â) [\* + *pteron*, feather, wing]. An order of the class Insecta which includes the butterflies, moths, and skippers. Characterized by scaly wings, sucking mouth parts, and complete metamorphosis.

**lepidosis** (lêp'i-dô'sis) [\* + *osis*, condition]. Any scaly or desquamating eruption such as pityriasis.

**leptothrix** (lêp'ô-thriks) [\* + *thrix*, hair]. Condition in which the shaft of the hair is encased in hardened, scaly, sebaceous matter.

**lepra** (lêp'râ) [Gr. *lepra*, leprosy]. A term formerly used for leprosy. Now used to indicate a reaction which occurs in leprosy patients consisting of aggravation of lesions accompanied by fever and malaise. This can occur in any form of leprosy and may be prolonged.

***l. alba***. Skin is anesthetic and white, and different forms of paralysis follow.

***l. anæsthetica***. Leprosy with anæsthetic areas on body.

***l. Arabum***. True or nodular leprosy.

***l. maculosa***. Form of lepra with pigmented cutaneous areas.

***l. mutilans***. Final stage of true leprosy.

***l. nervorum***. Maculo-anæsthetic leprosy.

**leprid** (lêp'rid) [Gr. *lepra*, leprosy, + *eidos*, form]. Leprous cutaneous lesion.

**leprology** (lêp-rôl'ô-jê) [\* + *logos*, study]. The study of leprosy and methods of treating it.

**leproma** (lêp-rô'mâ) [\* + *oma*, tumor]. A cutaneous nodule or tubercle characteristic of leprosy.

**lepromin**. A substance prepared from lepromatous nodules of leprosy.

**lepromin skin test**. Test in which lepromin is introduced intradermally to attempt to diagnose leprosy. The test is positive in individuals with tuberculoid leprosy and is negative in individuals with the lepromatous form.

**leprosarium**. An institution for the care of lepers.

**leprosy** (lêp'rô-sê) [Gr. *lepra*, scaly]. A chronic communicable disease caused by the acid-fast *Mycobacterium lepræ*. It may occur in various clinical forms. The two principal forms are lepromatous and tuberculoid.

The *lepromatous* form is characterized by skin lesions and symmetrical involvement of peripheral nerves with anæsthesia, muscle weakness, and paralysis. In this form, the lesions are limited to the cooler portions of the body such as skin, upper respiratory tract, and testes. In *tuberculoid* leprosy, which is usually benign, the nerve lesions are asym-

metrical and skin anæsthesia is an early occurrence. Visceral involvement is not seen.

Lepromatous leprosy is much more contagious than the tuberculoid form. In the latter, *Mycobacterium lepræ* are found only rarely except during reactions.

Between the two major forms are *borderline* and *indeterminate* leprosy. In the *borderline* group, the clinical and bacteriological features represent a combination of the two principal types. In the *indeterminate* group, there are fewer skin lesions and bacteria are much less abundant in the lesions. In many respects, this infection resembles tuberculosis and for many years was regarded as incurable, a conclusion no longer considered true. SYN: *Hansen's disease*.

**ETIOL.** Caused by *Mycobacterium lepræ*. May occur at practically any age.

**INCUBATION:** From 1 to 30 years.

**SYM:** Onset very gradual. The first signs of infection are usually skin changes, but they may be so nonspecific and so slow to progress as to go unrecognized for years.

**DIAG.** Biopsy of a suspected skin lesion. The bacilli may not be present in tuberculoid lesions. In vitro tests of the immunologic response can be accomplished by the lymphocyte transformation test and the leukocyte migration inhibition test. SEE: *lepromin skin test*.

**COMPLICATIONS.** Bacterial infections of skin, ulcers, traumatic amputation of fingers due to anæsthesia. Tuberculosis is a much more common complication in untreated cases of lepromatous leprosy than in the tuberculoid form. Amyloidosis may be the cause of death in advanced cases.

**PROG.** With proper therapy the outlook for recovery is good.

**TREATMENT.** Dapsone (4,4'-diaminodiphenyl sulfone, DDS) is the form of sulfone most commonly used. If dapsone is not tolerated sulfoxone may be substituted. Rifampin is experimentally used in patients with sulfone-resistant bacilli. The management of patients with leprosy is complex and may require expert consultation. Such assistance may be obtained by contacting physicians at the U.S. Public Health Service Hospital, Carville, Louisiana.

Segregation of patients in colonies or hospitals until bacterial tests have been negative for six months is not the preferred or effective method of isolating patients. Ambulatory treatment of patients at general clinics has been found to be much more effective. Because they are more susceptible to this disease than adults, children should be removed from contact with leprosy patients.

## TESTIMONY OF THE

## MAINE HUMAN RIGHTS COMMISSION

ON LD 2063

## AN ACT TO PROTECT THE PUBLIC HEALTH IN RELATION TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

CHAIR GAUVREAU, CHAIR NELSON, MEMBERS OF THE COMMITTEE ON HUMAN RESOURCES, FOLLOWING IS THE TESTIMONY OF THE MAINE HUMAN RIGHTS COMMISSION, PREPARED BY PATRICIA E. RYAN, WHO IS IN BALTIMORE ON COMMISSION BUSINESS. I AM JOHN E. CARNES, COMMISSION COUNSEL.

THIS TESTIMONY OF THE MAINE HUMAN RIGHTS COMMISSION IS PRESENTED NEITHER FOR NOR AGAINST LD 2063. THE REASON FOR THE COMMISSION'S TESTIMONY IS THAT THE PRINTED VERSION OF LD 2063 IN §17001 THROUGH §17004 CONTAINS LANGUAGE THAT IS ALREADY IN THE MAINE HUMAN RIGHTS ACT, THE STATE'S ANTI-DISCRIMINATION STATUTE, ENFORCED BY THE MAINE HUMAN RIGHTS COMMISSION. IT IS OUR UNDERSTANDING THAT THOSE PORTIONS OF LD 2063 WILL BE AMENDED OUT BY THE SPONSOR, SENATOR BARBARA GILL.

# MAINE=

# HUMAN

# RIGHTS

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Executive Director  
PATRICIA E. RYAN



THE MAINE HUMAN RIGHTS ACT PROHIBITS DISCRIMINATION IN EMPLOYMENT,  
HOUSING, AND ACCESS TO PUBLIC ACCOMMODATIONS (AMONG OTHER AREAS) ON THE  
BASIS OF PHYSICAL HANDICAP (AMONG OTHERS).

AIDS CONSTITUTES A PHYSICAL HANDICAP UNDER THE MAINE HUMAN RIGHTS ACT.

"PHYSICAL...HANDICAP MEANS ANY DISABILITY...CAUSED  
BY...DISEASE..." [5 M.R.S.A. §4553 (7-A)]

UNDER THE MAINE HUMAN RIGHTS ACT, IT IS UNLAWFUL TO DISCRIMINATE AGAINST  
ANYONE WHO HAS A PHYSICAL HANDICAP, HAS A RECORD OF SUCH HANDICAP, OR IS  
REGARDED AS HAVING A HANDICAP.

I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.